

IN THE  
District Court of the United States,  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

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THE UNITED STATES OF AMERICA,  
PETITIONER,

VS.

MOTION PICTURE PATENTS COM-  
PANY et al., DEFENDANTS.

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***RECORD---VOLUME II.***

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TESTIMONY OF WITNESSES FOR THE  
PETITIONER.

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UNITED STATES OF AMERICA

v.

MOTION PICTURE PATENTS CO. ET AL.

RECORD—VOLUME II.

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**Volume II.**

1

WILLIAM H. SWANSON, resumes the stand for further cross examination.

Cross examination (continued):

The Witness: Mr. Examiner, I would like to withdraw an answer that I made to a question yesterday, voluntarily withdraw it.

The Examiner: You have a right to make any statement in reference to your testimony at any time you see fit. 2

The Witness: Thank you. At the time I gave the answer, it was under stress of circumstances, and I did not realize at the time what effect it might have, or the position it would place me in as an interested or disinterested witness in this case or any future association.

Mr. Willis asked me yesterday if I was unfriendly to the gentlemen of the Patents Company or the General Film Company, and I said I refused to answer. I say, I did not realize what interpretation that might have. I now say that for quite a number of years prior to the formation of the Patents Company, I esteemed nearly all of the members of them as friends, and with the exception of those who are now in those two companies with whom I have not become very well acquainted, I have still a very kindly and friendly feeling, and I am not interested in this case at all in the sense of a business rival. I would like to have that understood, and have my position understood in making my answer of yesterday. 3

And I would like to supplement another answer that I gave Mr. Willis this morning, when he asked if I fulfilled the conditions of the contracts of the Patents Company, inasmuch as at all times having in mind organizations that dove-tailed into the Patents Company, my testimony at times is with the idea, in my mind, at any rate, of not only the Patents Company's conditions and contracts, but they 4



1 also trail themselves back into the Edison agreements, and therefore I would like to supplement that answer this morning. Not only did I endeavor to live up to the contracts of the Patents Company, but it was very expensive to me and as well destructive to my business, in living up to the contracts with the Edison Company, inasmuch as on the first day when I returned to Chicago in order to meet the prices as outlined in that schedule, I had to reduce my business \$1,700 a week.

2 Mr. CALDWELL: Now, Mr. Examiner, I object to this speech that the witness is making on the record, and I move to strike it out as a voluntary statement that is made by the witness in response to no question that has been asked him, and I would request the Examiner to stop this harangue on the part of the witness.

By Mr. WILLIS:

Q. With whom have you been talking with reference to these two answers that you have modified? To the  
3 counsel for the Government? A. I have not spoken to the counsel for the Government to-day at all.

Q. At any other time, have you spoken to the counsel for the Government with reference to the answers which you have modified? A. No, sir.

Q. What? A. No, sir.

Q. Have you talked with anybody? A. I did

Q. Who? A. Mr. Lewis, the gentleman sitting behind  
you.

Q. The gentleman who nodded to you for the purpose of instructing you yesterday? A. The same, yes, sir.

4 Q. Is he the only one that you have talked with with reference to the modifications of your answers? A. I believe that is all.

Q. Did you talk with Mr. Darling? A. No, I have not spoken to Mr. Darling at all. In fact, I have not spoken to anyone since I have left this room except Mr. Lewis, and some gentleman I met downstairs, a stranger.

Q. Mr. Lewis is the gentleman who has corrected you? A. No, sir, I told him that I had reconsidered my answer, and I told him I intended correcting it myself.

Q. After you had talked with him? A. No, not after talking with him. That is how I started to talk to him. I hardly think Mr. Lewis is capable of giving me any instructions. 1

Mr. WILLIS: I am glad you referred me to the source of proper information.

Q. I forgot to ask you, Mr. Swanson, from whom did you make your large purchases of films in 1908? A. From the usual sources.

Q. That is rather indefinite. Why don't you just give me the names, so that you will not prolong the cross examination? A. I will be very glad to do that, Mr. Willis, but it would be impossible to tell you, Mr. Willis, whom I bought film from. I have not any idea as to who all the parties were. 2

Q. Well, when you placed orders running up into the thousands of dollars, did not that impress upon you the person with whom you were dealing at the time? A. As I explained, it was not altogether a method of placing orders. We would go up and just take material that was there at hand, and carry it away. 3

Q. You had to pay for it sometime or other, didn't you? A. Yes, sir, the largest purchases I made were from the Pathe representative.

Q. Pathe Freres? A. Yes, sir; I bought large quantities from Pathe Freres.

Q. When? A. At all times. Continuously from the first day I went into business.

Q. Well, who else? A. Selig Polyscope Company. The Lubin Company, Vitagraph Company, Chicago Film Exchange, Kalem, Essanay. 4

Q. Did those purchases run into \$10,000 or \$15,000 or \$20,000 at a time? A. Not with each individual party. No. That would be distributed between all of them. I have made payments of from five to ten thousand dollars at a time to one concern.

Q. Which one of those that you have mentioned? A. Well, Pathe Freres.

Q. Mr. Swanson, you spoke of your profits being \$100,000 or more. In estimating those profits, what would you include in them besides cash? A. The various businesses that

1 I was opening up in different places, stock on hand, such as material stocks, merchandise of various kinds.

Q. Merchandise of various kinds and film you had on hand? A. No. I do not consider—I do not think I considered that incident to any portion of the profit. We film men usually consider only what money we have in actual tangible things that we can turn into money, as being of any value.

Q. Now, Mr. Swanson, you have testified that you made \$100,000 or more during a year, and I have asked you a simple question. In estimating that amount, what property  
2 you included other than cash? A. Everything except film that I owned.

Q. Well, did not you include film? A. No, sir.

Q. Are you sure of that? A. Positively.

Q. Will your books show whether you included film or not? A. Surely they would.

Q. Have you got those books? A. No, sir.

Q. Where are they? A. They are in Chicago.

Q. They are in existence, aren't they? A. I think the larger portion of my books are in existence.

Q. I mean the books that would show that you made  
3 \$100,000 or more a year, are they in existence? A. Well, when I left my Chicago business, I left the whole lay-out just as it was, and walked away from it, and stayed here in New York several months, and wrote back to another young fellow to lock the place up.

Q. Another young fellow like yourself? A. No. A young man working for me. However, it did not require the books to know that I was making so much money. Every-  
4 body in the business knew I started in business with ten cents, half of which was furnished by Mr. Selig, and the various enterprises that I had, the furniture and equipment which I had, which of course must have been paid for, were very expensive, and they were indicative of my making money, and I had not but one source of making money, and that was my film business and the theatre business.

Q. And the mercantile business? A. The film theatre business and theatre business.

Q. And the mercantile business you were in? A. The mercantile were side issues.

Q. You were in them, weren't you? A. Not to any degree or consequence.



Q. I don't know to what degree, only from what you have said? A. Yes, sir. I will explain to you, that in the course of a year, I would perhaps sell four or five pianos, and perhaps a dozen photographs, and perhaps in the neighborhood of ten or fifteen thousand dollars worth of carbons and condensers, and tickets and such as that. 1

Q. All those were included— A. (Interrupting) The profits were included in my earnings, yes, sir.

Q. In the \$100,000? A. Yes, sir.

Q. And your furniture and personal property that you have in your theatres, picture theatres, they were all credited to profit and loss, weren't they? A. Well, the theatres that I had, were mostly all, in fact, in 1908, they were all under a lease. I had not any personal property in them. 2

Q. Well, the personal property in there, the fixtures, and things— A. They belonged to the theatres, and were included in the leases themselves.

Q. This profit and loss account included your profits on your theatre business? A. Yes, sir.

Q. I understand that you are now connected with the Universal Company? A. The Universal Film Manufacturing Company. A. New York corporation. I am the Secretary. 3

Q. A New York corporation, and you are the Secretary, and located, as you described, in New York City, with its principal offices? A. Yes, sir.

Q. How long has this Company been in business? A. Since the 25th of May, 1912.

Q. Who are its officers? A. Mr. Carl Laemmle is President, Mr. P. A. Powers, Vice-President, Mr. David Horsley, Treasurer, and I am Secretary.

Q. Mr. Swanson, what other companies were consolidated in or absorbed by the Universal Film Company? A. The Independent Film Manufacturing Company afterwards—at that time was changing its corporate name to the Imp. The Powers Picture Play Company, the Rex Motion Picture Manufacturing Company, the Champion Film Company and David Horsley. 4

Q. Were the constituent companies which you have named, corporations, firms or individuals?

Mr. GROSVENOR: I think that term "constituent" is a little misleading. They are not subsidiary com-



1           panies. The Universal was a consolidation by purchase, wasn't it?

The Witness: It was a consolidation by purchase, yes, sir.

By Mr. WILLIS:

2           Q. What companies did it absorb, or consolidate with, was my question. You have named a number of companies. Some five. I ask you whether they were corporations? Those constituent part that you have named, going into the Universal Film Company were corporations? A. Horsley and Powers were not corporations. The others were corporations.

Q. Where was the Independent Company incorporated? A. In New York.

Q. Where was the Rex Company incorporated? A. New York.

Q. The Champion Company? A. It was either a New York or a New Jersey corporation. I am not positive. They were located in New Jersey. Perhaps they may have been incorporated there.

3           Q. Where was Horsley doing business? A. In Bayonne, New Jersey, and in California.

Q. What? A. And California.

Q. Well, where was Powers Picture Play Company doing business? A. New York City.

Q. Well, now, each of those constituent parts, each of those five constituent parts was considered independent business? A. Yes, sir.

Q. What was the character of their business? A. Manufacturing of moving pictures.

Q. What? A. Manufacturers of moving pictures.

4           Q. I don't know that I understand you. Were they merely exhibitors? A. No, sir. They manufactured film.

Q. Manufactured film? A. They did not manufacture film, no, sir, they manufactured moving pictures.

Q. Well, how do they manufacture them? A. They photographed, by means of a camera, onto a sensitized surface of a piece of celluloid.

Q. Where did you get the film to do that with? A. They bought it from various film manufacturers.

Q. From Edison? A. Certainly not. Eastman.

Q. Eastman? A. For one, yes, sir. Lumiere, for another. Agful Company, for another. 1

Q. As I understand you, these individual five parties that went into the Universal Film Company, would buy the raw—  
A. (Interrupting) : Film stock.

Q. (Continuing) : Film stock, and have their own studios, and photograph their own pictures, and then reprint, if you please, from that? A. They would develop and reprint in their own laboratories.

Q. In their own laboratories? A. Correct, in their own laboratories, yes, sir.

Q. Did the Independent Company have a large patronage? A large number of exchanges? A. They had no exchanges. 2

Q. Just exhibited here in New York, did they? A. They did not exhibit at all.

Q. Did not they manufacture reels and sell them to exchanges? A. Yes, sir.

Q. How many reels a week would they manufacture? A. Would who manufacture?

Q. We will take the Independent Company.

Mr. GROSVENOR: At what date? 3

Mr. WILLIS: In the time just prior to the consolidation.

The Witness: They would sell about three reels a week. Would sell about 90 reels.

By Mr. WILLIS:

Q. A week? A. Yes, sir.

Q. How about the Powers Picture Play Company? A. The reason I can give you a definite answer on the Imp or the Independent, as you term it, we called it the "Imp," in the business, is that it is one of the best sellers we had, and was noticeable for that fact, and the Powers is one of the poorest made subjects, and their sale was not very great, and for that reason, no one paid any attention—not enough attention to know how many were being sold. 4

Q. You don't know how many they released? A. No. Not very many.

Q. How about the Rex Company. You had been con-

1 nected with them, hadn't you? A. I was President of that company.

Q. What sort of a business was that doing? A. We sold about 60 on the two reels a week. After making a second release. We sold 50 when we only made one. When we sold two it was cut down to 60.

Q. How about the Champion? A. Poor old Champion! He was lucky to sell any.

Q. You took him in, though, didn't you? A. Well, that was more out of sympathy than anything else.

2 Q. That is another phase of it. How about Daniel Horsley?

Mr. GROSVENOR: Are you talking now about reels of 1,000 feet?

The Witness: Yes.

By Mr. WILLIS:

Q. How about Daniel Horsley? A. David Horsley?

3 Q. David Horsley? A. He sold in the neighborhood of about 80, on three reels of a thousand feet each, per week.

Q. You had been President of the Rex Motion Picture Company, hadn't you? A. Yes, sir. I am yet.

Q. Is that company still in existence? A. It retained its corporate existence for the reason that there has been suit brought against us, and we cannot dissolve until the suit is cleared away, which I understand has been cleared away.

Q. By whom? A. A suit brought by whom?

4 Q. Yes. A. A concern known as the Majestic Motion Picture Company sued the Motion Picture Sales Company, and its affiliations of various manufacturers, and the individuals connected with the separate corporations as well.

Q. The plaintiff in that suit is another independent picture company, isn't it? A. Yes, sir.

Q. How many independent picture companies are there? A. It is inestimable. I don't know.

Q. What? A. It is hard to say. I have not any conception.

Q. How many do you know of? A. I don't really know. Twenty-five or thirty. I cannot give you a definite number.



Q. Mr. Swanson, what was the object in the formation of the Universal Film Company? 1

Mr. GROSVENOR: I object to that as too irrelevant to be competent, and not proper cross examination, and going into matters outside of the record, and not in any way material in this case.

Mr. WILLIS: I am like you. I want to show the general trend in the business.

The Witness: I am very much afraid that you will try to sic on another investigation of the independents. 2

Mr. WILLIS: I am not trying to do anything of that sort. I want you to appear in your true light. That is all. Read the question.

The question was read by the stenographer.

The Witness: The primary object was to make money.

By Mr. WILLIS:

Q. Well, what was the secondary object, if you had one? 3  
A. To make money.

Q. Now, will you kindly tell me how you were going to make money? A. Selling film and manufacturing it.

Q. What was the purpose of putting all these five parties, three of them corporations, and two of them firms, into one company? Why did not you let them alone and let them make money separately? A. The activity of the Patents Company was so great, that it was impossible to make money separately. Legal difficulties and litigation that they caused, was so extensive, and their organized efforts in having control of the business, and control of the programme, necessitated meeting that sort of competition with some sort of organized efforts. 4

Q. Did the Universal Film Company own any patents, either on films or projecting machines, or cameras? A. No, sir. Thank God.

Q. Well, what were you to be sued for? A. I will have to refer you to Messrs. Kenyon & Kenyon on that. It is too complicated for my comprehension.

Q. Did they go after you for infringement of patents?



- 1 A. I think some concern did claim they owned some patents, and it was proven in court they did not own them.

Mr. CALDWELL: I move to strike out the last part of the witness' answer as not responsive to the question, and as being a mere conclusion of the witness.

The Witness: What is the inquiry?

Mr. WILLIS: Read the previous question.

- 2 The stenographer repeats the question: "Did they go after you for infringement of patents?"

The Witness: Nobody went after the Universal Company for patents; no, sir.

Mr. GROSVENOR: I suggest that we adjourn until February 5th.

At this point, on this Friday, January 24th, 1913, adjournment was taken until Wednesday, February 5th, 1913, at 10.30 o'clock A. M., at the Hotel McAlpin, as above.

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IN THE  
DISTRICT COURT OF THE UNITED STATES,  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

1

UNITED STATES OF AMERICA, Petitioner,	No. 889. Sept. Sess., 1912.	2
<i>v.</i>		
MOTION PICTURE PATENTS Co., and others, Defendants.		

New York City, February 13th, 1913.

The hearing heretofore fixed for February 5th, 1913, was upon application of the petitioner, and by consent of defendants, postponed until February 19th, 1913.

The hearing heretofore fixed for the 19th of February, 1913, was upon application of the petitioner, postponed until February 24th, 1913.

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The hearing heretofore fixed for February 24th, 1913, was, upon application of Mr. George R. Willis, and with the consent of the petitioner's counsel, and counsel for defendants, postponed until February 27th, 1913, to be resumed at Hotel McAlpin, New York City, at 10.30 o'clock A. M.

Thereupon the hearing was resumed at Hotel McAlpin, New York City, at 10.30 o'clock A. M. on this February 27th, 1913.

Present, on behalf of the Petitioner, Hon EDWIN P. GROSVENOR, Special Assistant to the Attorney General. 4

JOSEPH R. DARLING, Esq., Special Agent.

Present, also, Messrs. FRED R. WILLIAMS, and CHARLES F. KINGSLEY, appearing for Motion Picture Patents Company, Biograph Company, Jeremiah J. Kennedy, Harry N. Marvin, and Armat Moving Picture Company;

Mr. J. H. CALDWELL, appearing for William Pelzer, General Film Company, Thomas A. Edison,

- 1 Inc., Kalem Company, Inc., Melies Manufacturing Company, Pathe Freres, Frank L. Dyer, Samuel Long, J. A. Berst and Gaston Melies;  
Mr. HENRY MELVILLE, Attorney for George Kleine, Essanay Film Manufacturing Company, Selig Polyscope Company, George K. Spoor and W. N. Selig;  
JAMES J. ALLEN, appearing for Vitagraph Company of America, and Albert E. Smith.  
Mr. DWIGHT MACDONALD, appearing for Mr. Rowland.
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Thereupon WILLIAM FOX, the next witness subpoenaed by Petitioner, of lawful age, duly sworn, deposed:

Direct examination by Mr. GROSVENOR:

Q. Mr. Fox, what is your business? A. Manager of theatres and exhibitor of motion pictures.

- 3 Q. Are you connected with The Greater New York Film Rental Company? A. I am, sir; I am President of that company.

Q. That is the company of which Mr. Louis Rosenbluh is the general manager? A. Yes, sir.

Q. Who has already testified in this case? A. Yes, sir.

Q. When did you start in the motion picture business, Mr. Fox? A. Well, sometime in 1906.

Q. And when did you establish The Greater New York Film Rental Company? A. Between 1906 and 1907.

- 4 Q. And that was a company doing business as a rental exchange, distributing films and projecting machines to exhibitors? A. Yes, and the various other appliances required for the exhibition of motion pictures.

Q. In the business of a rental exchange, what is the most important branch, the film business or the projecting machine business? A. Why, the film is the essential part; the others are only just traded in as an accommodation to the trade, practically.

Q. They are incidental to the principal business, which is the distribution of the films? A. Yes, sir.

Q. The Greater New York Film Rental Company took

out a license from the Motion Picture Patents Company about January, 1909? A. Yes, sir. 1

Q. Had you been doing business prior to January, 1908, with the different manufacturers of films and projecting machines? A. Yes, sir.

Q. And when I say "you," of course, I refer to your Film Rental Company and not to your theatres? A. Yes, I understand.

Q. And in buying these films from the different manufacturers prior to, or during the time, I mean, that is, prior to January, 1908, were the different manufacturers in competition? A. In keen competition with one another. 2

Q. And as to prices and terms of sale? A. Yes.

Q. Then prior to January, 1908, there had been this competition? A. There had been keen competition.

Q. Now, in the year 1908, and about January or February of that year, this so-called association of Edison Licensees was formed? A. Yes, sir.

Q. And which a number of the manufacturers joined? A. The majority of those who are in the Motion Picture Patents Company joined the association.

Q. And who were the ones on the outside? A. The ones that remained on the outside were the Biograph Company and Kleine, of Chicago. 3

Q. George Kleine? A. Yes.

Q. And prior to and during the year 1908, up to the formation of the Patents Company, was there keen competition as to prices and terms of sale between these two factions, the Biograph faction and the Edison faction? A. I could answer that there was.

Q. Sort of a warfare, was there not?

Mr. KINGSLEY: I object to the question as calling for a conclusion of the witness. 4

The Witness: There was.

By Mr. GROSVENOR:

Q. Now, were you present at a meeting of the rental exchanges in January, 1909, which was held at the Hotel Imperial in New York City? A. I was; yes, sir.

Q. Had you seen this so-called license agreement be-



1   tween the Patents Company and the rental exchanges prior  
to that date? A. I had not.

Q. You may state whether or not anyone read that  
agreement to the different persons present?

A. During that meeting that agreement was read by  
Mr. Dwight MacDonald.

Q. While you were present? A. Yes, while I was pres-  
ent.

Q. And then was there discussion at the meeting in re-  
gard to the agreement? A. I took the floor on behalf of my  
2   company, and protested against the agreement. After hear-  
ing the contents of the agreement read, and finding that it  
changed the terms of the way we were to do business in  
the future between the Edison agreement, which we got in  
1908, and the license agreement of the Motion Picture Pat-  
ents Company that was read by Mr. MacDonald (the Edison  
agreement allowed us to purchase film and own it outright,  
and the license agreement of the Motion Picture Patents  
Company was drawn so that they were leasing the film to  
us), I stated at that meeting, I said: "I can't understand  
why there is going to be any change made here in regard  
3   to the ownership of the film," and I said, "You, Mr. Mac-  
Donald, was present at the meeting when the first agree-  
ment was made—"

Mr. KINGSLEY: I desire to object now to anything  
that was said by the witness to Mr. MacDonald as  
incompetent, irrelevant and immaterial.

The Witness: I said, "You, Mr. MacDonald, were present  
at the first meeting—"

4   Mr. GROSVENOR: This Mr. MacDonald that you are  
referring to was the Dwight MacDonald that became  
the General Manager of the Motion Picture Patents  
Company?

A. Yes, that is the Mr. MacDonald I mean, the man that  
was formerly secretary of exhibitors in disguise—

Mr. KINGSLEY: I object to that, and ask that it be  
stricken out.

By Mr. GROSVENOR:

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Q. He was the same Mr. MacDonald who had been connected with the Film Service Association? A. He was the MacDonald who was the Secretary of the Film Association.

Q. Well, just continue your testimony now in regard to this meeting in January, 1909.

Mr. KINGSLEY: I wish to enter an objection now to any conversation that the witness may detail that he may have had with Mr. MacDonald.

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By Mr. GROSVENOR:

Q. You understand that I want you to tell what transpired at this meeting of rental exchanges? A. Yes.

Q. And not any private conversations you have had with Mr. MacDonald, but any that you had in the presence of others at this meeting? A. What I have stated already did transpire at the meeting room.

Q. How many rental exchanges were represented there, approximately? A. Well, as to that, I am not sure, whether fifty or sixty or seventy, I do not know the exact number.

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Q. A number? A. Yes, there, either in person or by proxy. I said, "Mr. MacDonald, when you were acting as Secretary for the Film Service Association—"

Mr. KINGSLEY: I wish to enter objection to any conversation that the witness may relate that occurred between him and Mr. MacDonald, as being hearsay, incompetent and irrelevant, and in no sense binding upon any of these defendants.

Mr. GROSVENOR: These were not conversations, but speeches delivered at the meeting.

4

The Witness: This was a speech addressed to Mr. MacDonald, who was there representing the manufacturers, and for whom he was reading this agreement.

Mr. KINGSLEY: I make the same objection to any speech that may have been made at the meeting.

The Witness: I said, "Mr. MacDonald, when you passed

1 on the agreement for the exhibitors as Secretary of the Film Service Association, when the Edison agreement was given to us, one of the important reasons, or one of the urgent things, that you persuaded us and showed us why we should accept that particular agreement as our Secretary was on account of the fact that it did not change the relationship of doing business in any shape, manner or form, that we were purchasing films at the same prices, and, in fact, for less money, under the agreement than without the agreement."

2 By Mr. GROSVENOR:

Q. You mean the Edison agreement? A. Yes, sir.

Q. Of 1908? A. Yes, sir. And I said, "You showed us or told us that we would have all kinds of advantages in buying under the Edison agreement, and to-day you are here representing the manufacturers with an agreement that is absolutely different from the original Edison agreement, which is now taking away the right of the ownership of the film, and that is compelling us to do business under certain conditions, and you are putting rules and regulations on us that are going to be the hardest in the world to live up to, and before I will consent for my company to sign that agreement you will have to tell me for what length of time the agreement is for, as the date is in blank, giving you the arbitrary right of cancellation, and does not state for what period you are supplying this motion picture film."

3 Q. You refer now to what is known as the "14-day clause" in the agreement? A. Yes, sir.

Q. You may state whether or not after this discussion at the meeting, a committee from the rental exchanges was appointed to interview the manufacturers. A. During the course of that meeting and a few minutes later there was a committee appointed to wait on the manufacturers, and to find out from them for what period the license agreement was intended for, in view of the fact that it did not specify a specific date.

4 Q. Do you recall who was appointed to that committee, any of the names? A. If I had a list of the names—I mean of who were members of that organization at the time, I could pick them out, probably.



Q. At page 343 of the record, I show you a list of members of the Film Service Association, being Petitioner's Exhibit No. 90, which is a list of all exchanges, and I will ask you to look at it, and see if that will help you or refresh your recollection? A. Yes. (Examining list.) Mr. William H. Swanson was one. I think, but am not positive now, that Mr. Lieber, of Indianapolis, was another. I am not positive, but I think that Mr. Gillingham, of Grand Rapids, was another. If those names are absolutely important, I could get them for you from another source. 1

Q. Well, it is not important. You have testified as far as you can recall the names? A. Yes, sir. 2

Q. Did this committee report back? A. Yes, sir, they did.

Q. Was any change made in the license agreement that had been submitted to the meeting? A. There was no change made in it at all; they reported back that they would make no changes and that the agreement would have to be signed—

Mr. KINGSLEY: I object to what the committee reported as hearsay, incompetent, irrelevant and immaterial, and not binding upon any of the defendants. 3

The Witness (continuing): Exactly as it was drawn without a change, without the crossing of a "t" or the dotting of an "i," and that that was the agreement that they expected us to do business under, and that if we did not want to accept the agreement we did not have to lease any film from them, and that they did not care who did, or did not, take it, that that was the agreement, and the only agreement that they were going to offer at all. 4

By Mr. GROSVENOR:

Q. State whether or not thereafter, about January or February, 1909, you signed the rental exchange agreement? A. Prior to the signing of it—well, eventually I did. Prior to the signing of the agreement I called Mr. MacDonald—

Mr. KINGSLEY: I ask that the witness be instructed to answer yes or no.

1       The Witness: Prior to the signing of the agreement I called Mr. MacDonald on the 'phone. If it is your object to confuse me by putting in these objections—

      Mr. KINGSLEY: My object is that I am not going to have any colloquy with you, and I will put my objection on the record, and when I object I insist that you suspend.

      The Witness: Well, I will do that in the future.

2       Mr. KINGSLEY: I have no right to confuse you, but I shall object now as a matter of business. I have a right to make objections on the record, and I will say that I am not making this statement to the witness as an apology at all.

      The Witness: Then I will wait until you get your objections all in. Prior to the signing of the contract I called Mr. Dwight MacDonald on the 'phone.

By Mr. GROSVENOR:

3       Q. Where was he located? A. At 80 Fifth Avenue, at the office of the Motion Picture Patents Company, holding some office, I can't think what officer he was, he was a General Manager of some kind.

      Q. Yes. A. And I said, "MacDonald, I have before me the license agreement, and I understand you have 'phoned our office several times asking whether or not we were going to sign it. I am hesitating as to advising my company to sign this license agreement without having your assurance as to what the actual result of this agreement is going to be." "Why," he said, "Fox, you are foolish. There ought not to be any question or doubt in your mind; all this means is that we want the price of the film, and so long as you pay for it, and so long as you rent film in accordance with the agreement as they are giving it to you, they are going to continue to ship you film, and I have been told by the manufacturers to say, as I have said before to you, that the life of this agreement depends entirely on the life of the patents under which this agreement is given to you, and until the expiration of those patents we will continue to furnish you film so long as you live

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up to the terms of the agreement." I said, "Now, let me understand what you mean by living up to the terms of the agreement?" I said, "You know, MacDonald, that in the meeting room I made it very clear and distinct that the thing was drawn in a technical way and that there were a thousand different petty excuses you could manufacture by which you could justify your cancellation of this license, and in that way put us out of business." And he said, "Why, Fox, we do not intend to do anything that is going to be technical at all; there are only two of the provisions that we are going to enforce, and they are, one, that you pay for the film you lease from us, and the other, that you do not rent this film to anyone who does not receive a license from the Motion Picture Patents Company. In other words, we want to control the exhibitor and we want to control the film renter," and on that assurance I advised my company to sign that license agreement.

Q. Were there any other adequate sources of supply of film outside of the manufacturers who had taken out licenses with the Patents Company? A. In my opinion there was not enough of it, and what there was of it was bad, and a man would simply ruin his business to try and exhibit it.

Q. Then afterwards, that is, in the years 1909 and 1910, and down to the present time, you were doing business as a licensed rental exchange? A. Yes, sir.

Q. Were there in the year 1909 other licensed rental exchanges doing business in New York City? A. I think there were eight or nine of them that had licenses. Can I see that list again? That will give us the exact number.

Q. Well, that is, approximately? A. Yes.

Q. When did the General Film Company enter the field in the rental business in New York City, approximately? A. If you will be good enough to let me refresh my memory, I have some data in that affidavit there.

Q. I show the witness an affidavit dated December 16th, 1911. Is that a copy of the affidavit made out by you on the date stated? A. Yes, it is.

Q. That is in the case of The Greater New York Film Rental Company against the Motion Picture Patents Company and others; I show you that for the purpose of refreshing your recollection. A. (after examining paper): The General Film Company entered business about April or May, 1910.

1 Q. In the Fall of the year 1911, speaking from your knowledge of the business, how many of the licensed rental exchanges which you have testified were doing business in New York, were left? A. The Greater New York Film Rental Company, and the new company known as General Film Company.

Q. You may state whether or not in September, 1911, you had any conversation with one P. L. Waters in regard to the selling out of your business. Just answer yes or no. A. I did, sir.

2 Q. Who was this P. L. Waters? A. General Manager of the General Film Company.

Q. Now, please state how the conversation arose, and what was said, and where it was, and all that you can recall in regard to the meeting?

Mr. KINGSLEY: I object to it as incompetent, immaterial, irrelevant and as hearsay, and as not binding upon the defendants, and as not shown to be a conversation with any officer of the General Film Company, and therefore not binding on the General Film Company, or any of these defendants.

3 Mr. GROSVENOR: I think you testified that Mr. Waters was General Manager of the General Film Company.

The Witness: I did.

4 The Witness: In the early part of September, 1911, I was sent for, or called up on the telephone by Mr. Waters, and asked to call and see him, and in answer to that telephone communication I did call to see him. Now, if you would allow me to get the matter—when I made this affidavit it was clear and fresh in my mind, and the conversation here (referring to a paper) is almost exactly, as near as I could possibly give it at that time, and of the language that was used at that time, and if you will permit me to—

Q. (interrupting): That affidavit is dated December—A. 16th day of December, 1911; about that time.

Q. Please refresh your recollection by reading that affidavit, and then state the conversation? A. Well (examining paper)—

Q. State to the best of your recollection what was said,

as near as you can recollect? A. He said, "Fox, I have sent for you." 1

Mr. KINGSLEY: Who said this?

The Witness: Mr. Waters. "I have sent for you and my object in sending for you, is to tell you that in my opinion this would be the very best time for you to sell your plant to the General Film Company, as you are no doubt aware that we have all of the business now." I said, "Waters, I do not want to sell my business. I am getting along all right. My plant is earning from \$60,000 to \$75,000 a year, and I would rather not sell." "Well," he said, "Fox, you know that I have always been friendly with you, and I am willing to give you my best advice and then you can do as you think best." He said, "You know, you have stayed in business a good long time. Everybody else is out, and you are still in, and if I were you, at this time, I would sell out and be done with it." I said, "Waters, look here, I no more want to sell this business than fly off the roof. A plant that earns from \$60,000 to \$75,000 a year and goes along without much bother and without much trouble and without much risk, is worth anywhere from \$600,000 to \$750,000 on a ten per cent. basis. I don't suppose your General Film Company is going to pay that kind of a price, and without that kind of a price, I don't want to sell." 2 3

Q. Then did he say anything further about the question of selling out? A. He said, "Fox, now if you don't offer your plant to-day, you might not get another chance. Now, if I were you—that is all I can say to you. I am not going to talk any plainer. You can understand what I mean. Now, don't press me and don't walk out and later say that I did not try to treat you fair. I cannot talk any plainer than I am to you now. I would advise you to sell, and I don't mind telling you if you don't sell now, you shall not have another chance to sell." I said, "Now, Waters, let us see just what you mean by that. Am I to infer that if I do not sell my business to the General Film Company that you are going to cancel my license and that I am going to be put out of business as you have done to a good many others?" "Well," he said, "I did not say that. All I can tell you is that you ought to sell." I said, "Now, look here, Waters, if you pretend you have got all of this friendship for me, I think I do understand what 4



- 1 you are driving at, and I think I am beginning to see it as you are putting it. Now, I don't want to be driven out of business, and I don't want to lose my business. But if I have got to sell, and you say I have got no alternative at all, I suppose I have got to sell. That is all." "Now," he said, "son, you are getting some sense." I said, "I have been informed by other people whose plants you have purchased, about what you are paying, and in my opinion, they are ridiculously low figures for a plant—for the money that some of them were earning. Now, I would not want to let go at all even under this pressure without I got at least \$150,000."
- 2 "Now," he said, "you are all right, you are traveling on the right road there, you are a little bit off on the figures, but as long as you realize it to-day, and now is the time, why, on the question of price, I will call in the big chief." He said, "That is, Mr. J. J. Kennedy. You know that he is an officer in the General Film Company, he is an officer in the Moving Picture Patents Company, he is an officer in the Biograph Company, he is a leading spirit in this entire thing, and this is a part of his brain, this is his 'child,' as he calls it, and I will let him talk to you and see how much he wants to pay for it." And he called the big chief in.
- 3

Q. Now, you may state to the best of your recollection what was said in the presence of Mr. Kennedy or between you. A. Can I refresh my recollection?

Q. Yes, if you want to refresh your recollection, read the other part of the affidavit.

Mr. CALDWELL: It is understood that the same objection is made to conversations with Mr. Kennedy as was made with reference to the conversation with Mr. Waters, he not being an officer of the company.

4 Mr. GROSVENOR: Very well.

The Witness: He is an officer, ain't he?

By Mr. GROSVENOR:

Q. This is Mr. J. J. Kennedy, to whom you refer? A. This is Jeremiah J. Kennedy, I believe.

Q. Now you can read on in the affidavit, and refresh your recollection, and then I will ask you after you have



read it, to state what transpired in Mr. Kennedy's presence? 1

A. (Witness reads.)

Q. Having read this, please state to the best of your recollection what transpired? A. Mr. Kennedy entered into the room where I was sitting with Mr. Waters, and Mr. Kennedy said, "I am pleased to see you in our office; what is it I can do for you?" "Well," I said, "Mr. Kennedy, there is not much you can do for me, except to give me your assurance that you are not going to cancel the license of the Greater New York Film Rental Company?" And he said, "Do you realize that you are now in the office of the General Film Company, and I speak now in the capacity as an officer of the General Film Company, and you know, that the General Film Company does not control the issuance nor the cancelling of licenses, that that is controlled by the Motion Picture Patents Company, and we cannot either issue or cancel a license, nor do we intend to do anything of that kind." I said, "If that is how you feel about it, and you say you are not going to take my license away, why, everything is all right, and we are hunky dorum. I will go along." Waters said, "Mr. Kennedy, I had quite a talk with Fox, and I think he understands his position pretty well." And the price that I asked of Waters was discussed. Mr. Kennedy said that I was away off on the price. 2

Q. Was the figure mentioned to Kennedy? A. \$150,000. Mr. Kennedy said, "We are not buying exchanges that way, we are buying them systematically. When we went into the General Film Company, we laid out a schedule of how much we were going to pay every one of these exchanges, and we have religiously lived up to the schedule, and paid exactly what the schedule called for, and as we planned and mapped it out when we first started out with this concern, and we won't be able to do any more for you, because if we did, we would have a lot of discontented men throughout the country. We assured them that we were going to live up to schedule and pay everybody in accordance with the schedule, and we will do the same by you as was done by everybody else. That is fair and square, and you have not any kick coming as long as we do that." I said, "Do you mind telling me how much I am entitled to under this schedule?" He took from his pocket a memorandum, and went into it as to the amount of customers, and so forth, and finally he compiled some figures about 3 4

- 1 last week's films purchased, 90% of it returned, a whole lot of mish mish—

Mr. KINGSLEY: (interrupting): A whole lot of what?

- 2 The Witness: A whole lot of mixed up figures. And he said, "In my opinion, we could pay you \$89,000." I said, "Mr. Kennedy, I am awfully sorry. I am much obliged for your offer. You know, I did not come here from my own free will. I was sent for by Mr. Waters, who just told me that this is the right time for me to sell out. If it was not for that, I would not come up at all. I don't want to sell my plant. I want to remain in business. I have helped build the motion picture business. I have helped exhibit it in such a way that it was a credit to the business itself, I have strived and worked hard, and I am wrapped up in the art of the business, and I want to remain in it. And so long as you do not cancel my license, and say that there is no trouble about my license being cancelled, I am much obliged for the offer, and I will run along." He said, "You don't have to worry. We ain't going to cancel your license. We ain't going to do anything to you at all. We don't do business that way with any one. We are all good business men, and we treat everybody fair and everybody square." I said, "All right, Mr. Kennedy, I hope that in the course of the next week, or two or three, I don't find that my license has been cancelled on some flimsy excuse or other." "Oh," he said, "don't worry about that, that will be all right, there won't be nothing happen to you. Just you run along, everything will be all right for everybody. We will take care of you, all right." And he took care of me.
- 3
- 4 I left the room from there with Mr. Waters accompanying me.

By Mr. GROSVENOR:

Q. Did you have any further conversation with Mr. Waters on that day?

Mr. KINGSLEY: Just a moment. I object to any conversation he may have had with Mr. Waters as incompetent, immaterial and irrelevant and not bind-

ing upon any defendant here, it not being shown that 1  
Mr. Waters is an official of any of these defendants.

By Mr. GROSVENOR:

Q. Will you please state what was that conversation—  
what Mr. Waters said? A. Waters said, "Fox, I think you  
are foolish. I thought you had some sense before I called  
the big chief in, but I see it all went to pieces again." I  
said, "Now, Waters, I am willing to go along in my little  
way and run my little business, and I am not annoying 2  
anybody nor bothering anybody. I am trying to run an  
honest business and get along." "Why," he said, "Fox,  
look here, don't you know that if I could get any assurance  
that the Motion Picture Patents Company would not cancel  
my license, the license of the Kinetograph Company, that I  
had, why," he said, "I would pay them all the money they  
gave me and twice as much as that." He said, "That would  
be a cinch, the way this business is now. If I was in the  
field, renting films, do you suppose I would have to be up  
here and be an employee of these people? But," he said,  
"I seen it coming. I knew the time was going to come when 3  
we had to get out, and I got out. That is all. Now, use a  
little sense." He said, "I am running this concern here  
now, I am the general manager of the General Film Com-  
pany, and when we meet in competition or in some other  
way, we are a great, big, gigantic wheel, and you are a little  
splinter. Every time we meet you, we have got to run  
over you and crush you, and get you out of the way, be-  
cause you are a stumbling block. We hear about this every  
day of our life here. A customer walks into our office and  
complains we are charging too much money for the service  
we are giving him. We say, 'That is the best we can do.'  
Now, the next morning, we find out he is a customer of 4  
yours. If he was not a customer of yours, he would not be  
a customer of anyone else, we can charge him as we like, and  
do as we like. Now, you understand we must get you out  
of the way. You are the last one. We must have thought  
a lot of you to leave you the last fellow. Now, be sane."  
He said, "Eighty-nine or ninety thousand dollars; I think I  
can fix it for you and get you a hundred." I said, "Waters,  
I don't think you are going to do anything for me. You  
are probably going to let me run along, and if you are, I



1 am satisfied. Just see that they do not cancel my license and job me, if you are my friend, and everything will be all right." With that I left, sir.

Q. Then you went off? A. I did, sir.

Q. Back to your business? A. Yes, sir.

Q. You may state whether or not after September, 1911, in the year 1911, you received a notice of cancellation from the Motion Picture Patents Company? A. I have got those in my pocket. I would like to get the exact dates from the originals, if you don't mind.

Q. All right. A. (Witness produces papers.)

2 Q. Can you answer that question, yes or no? A. I did.

Q. Have you that notice with you? A. I have.

Q. Please let me see it? A. (Witness produces paper.)

Mr. GROSVENOR: The witness produces a letter dated November 14th, 1911, on the letterhead of the Motion Picture Patents Company, addressed to the Greater New York Film Rental Company, signed Motion Picture Patents Company, by H. N. Marvin, Vice-President. I offer it in evidence.

3 The paper is marked Petitioner's Exhibit No. 137, and is as follows:

**Petitioner's Exhibit No. 137.**

**MOTION PICTURE PATENTS COMPANY**

80 Fifth Avenue, New York

November 14th, 1911.

Greater New York Film Rental Company,

4 116 East 14th Street,  
New York City.

Gentlemen:

Pursuant to the right reserved by this Company under the first clause of Section Nineteen of the Conditions of License forming a part of the Exchange License Agreement existing between you and this Company, and bearing date the twentieth day of January, Nineteen Hundred and Nine, we hereby notify you of our intention to terminate said



license, and that the same will terminate at eight o'clock  
A. M. on Monday the fourth day of December, Nineteen  
Hundred and Eleven, unless sooner terminated by this  
Company for any breach of the conditions of said license.

Yours truly,  
MOTION PICTURE PATENTS COMPANY  
By H. N. Marvin,  
Vice President

HNM/ACL.  
X-32

1

2

By Mr. GROSVENOR:

Q. Is that the notice with respect to which you have testified? A. Yes, sir.

Q. You may state whether or not that notice was received on or about the date stated in the letter, November 14th, 1911? A. It was. The same evening.

Q. Did you receive it by mail? A. I think it was delivered by messenger.

3

Q. Between this date, November 14th, 1911, and the interviews in September with Waters and Kennedy, with respect to which you have testified, had you seen Mr. Kennedy again in connection with the sale of your business? A. I did.

Q. Was that after the receipt of this notice or before the notice was received? A. After the receipt of the notice.

Q. Well, then, perhaps you had better read that question that I put before, and see if you answered that properly?

4

The stenographer repeats the question as follows:

"Q. Between this date, November 14th, 1911, and the interviews in September with Waters and Kennedy, with respect to which you have testified, had you seen Mr. Kennedy again in connection with the sale of your business?"

A. You mean between September and November 14th?

Q. Yes. A. No, I did not.

1 Q. After the receipt of this cancellation, you have testified you saw Mr. Kennedy? A. Upon the receipt of that notice, I got in touch with Mr. Kennedy; yes, sir.

Q. Will you please state when and where and what took place at the interview? For that purpose, I suggest that you refresh your recollection by reading again to yourself the affidavit referring to that. A. (Witness refers to paper.) On November 17th, or 18th, I called on Mr. Kennedy and I said—at his office in—well, at his office, anyhow. I said, “Mr. Kennedy, it happened.” I said, “I suppose you are aware of the fact that what I was afraid would happen,  
2 did happen, that the license of the Greater New York Film Rental Company has been cancelled.” I said, “If I am informed correctly, you had a meeting last Tuesday, November 14th, and on that date, decided to cancel that license. The manufacturers had a meeting.” He said, “You are correctly informed. We had a meeting, and at that meeting we decided to cancel your license.” I said, “I was afraid of that. I told you that when I met you at No. 200 Fifth Avenue.” He said, “That is not the result of any conversation you and I had. The cancellation of this license has  
3 nothing to do with our conversation, has nothing to do with the General Film Company.” He said, “I don’t want you to feel that way about it.” I said, “I don’t care how you put it, the result is the same. I have had a talk with you, and I was advised to sell out, and I did not sell out, and I predicted and asked you, and you assured me that my license would not be cancelled.” I said, “Here it is, here is your notice that you have cancelled it.” He said, “Now, Fox, don’t take it that way at all. I am your friend; I am willing to help you. Now, I made you a proposition the last time to buy you out, and to show you I am your friend,  
4 now that your license is cancelled, I am still willing to buy you out. How much do you want?” I said, “Well, at our last conversation I asked you for \$150,000, and you did not pay it, and cancelled my license. I suppose there is no use of asking for the same—but I really feel that you ought to give me at least \$125,000.” He said, “I will take that up with the Executive Committee.”

Q. The Executive Committee of what? A. Of the General Film Company. He said that the Executive Committee is made up of Mr. Berst of the Pathe Freres Company, Mr. Alfred Smith of the Vitagraph Company, and he would see

what they have got to say. I then tried to reach Mr. Kennedy by telephone several times between that time and the latter part of November, and was unable to do so, and finally one day located him at his office and called there and he said, "I am awfully sorry, Fox, I have been unable to arrange that executive meeting as yet, but as soon as I do, I will let you hear from me." I sort of felt as though something might happen to me, so I said to Mr. Rosenbluh, "You had better get in touch with Mr. Berst and arrange a conference for me"— 1

Mr. CALDWELL (interrupting): Any conversation between the witness and Mr. Rosenbluh is objected to as merely hearsay. 2

By Mr. GROSVENOR:

Q. Do not state your conversation with Mr. Rosenbluh. You may state whether or not you sent Mr. Rosenbluh to Mr. Berst to arrange for an interview between you and Mr. Berst. A. I did.

Q. Your cancellation notice which you received on November 14th became effective December 4th? Am I correct in that? A. On Monday, the 4th day of December, yes, sir. 3

Q. You may state whether or not you had this meeting with Mr. Berst, and whether that meeting was before December 4th. A. It was before December 4th. I had a meeting with Mr. Berst and it was before December 4th.

Q. And where was that meeting? A. At the office of the Pathe Freres Company.

Q. Please state to the best of your recollection what was said at that meeting?

Mr. CALDWELL: That question is objected to as incompetent. Any conversation between the witness and Mr. Berst, who is not shown to have any authority to bind the defendants in this action. 4

Mr. GROSVENOR: This evidence is introduced as against all the defendants.

The Witness: I said, "Mr. Berst, now, you are aware that my license has been cancelled, and I came here to ask you to intercede on my behalf for the reinstatement of my license."



- 1 He said, "That is impossible." I said, "I have been to see Mr. Kennedy, and he promised to call a meeting of the Executive Committee, of which he told me you were a member, to discuss with you and Mr. Smith the amount of money to be paid to me for the plant. He is still willing to buy it." He said, "Now, that shows you that we are all your friends." He said, "What did you do when you were down there?" I said, "I asked him for \$125,000." He said, "You have made the same mistake again. Now," he said, "if you had taken what he offered you, that is the schedule, then the whole thing would have been cleaned up. You did not take what
- 2 he offered you, and he cannot do anything more for you." I said, "Mr. Berst, I really don't want to sell out. I would like to stay in the business. I have bought a good many thousand dollars of film from the Pathe Freres Company, and I have always paid my obligations, and always done what I possibly could to show preference to your company, when the market was open, and when preference could be shown, and I think I have got a claim on your friendship. I ask you because of past business friendship and relationship to assist me and help me and have my business restored." He
- 3 said, "Fox, now I will talk pretty plain to you. I do like you, and you are a pretty nice fellow. I ain't going to beat around the bush at all." He said, "You know that I am one of the Executive Committee of the General Film Company, and I do not mind telling you that your exchange is in the way of the General Film Company." I said, "In what way, Mr. Berst? I conduct my business in a straightforward manner. I tried to live up as faithfully and carefully as one possibly can to the terms that you prescribe in your license agreement"—

- 4 Q. (interrupting): You refer to the license agreement with the Patents Company? A. With the Patents Company. "Oh," he said, "now, you are not so foolish. You understand what is the matter. The General Film Company was created for the purpose of absorbing all of the rental business, and it has absorbed all of the rental business. You are the only man on the outside. Now, we left you for the last, because we all were friendly inclined, just because you have been a good boy all this while and before that. You have had numerous friends in our organization, and we have all stuck by you. Now, you have got to go with the rest of them. We were organized to control the business and monopolize



it, and we are going to monopolize it. And you have got to get out of the way." I said, "Mr. Berst, I cannot see your theory at all. The little business that I do is so small compared to the amount of business that is done in film rental in America, that really I should not be an annoyance to you." He said, "Now, Fox, look here"— I said, "Besides, Mr. Berst you are such a busy manufacturer that you cannot know what is going on, and this must be a lot of conversation reported to you that I am in the way." He said, "Fox, I am an executive man of the General Film Company, and these matters are brought to me from time to time," and he said, "I have it put before me every day of the week that our customers cannot be advanced in price because of this, we know they are going to become customers of the Greater New York Film Rental Company. Now, we want to advance our prices, and we want to get more money for our merchandise, and we cannot do it because you are in our way. Now, we are not going to continue that way any longer. You have done it long enough. You have been a stumbling block of our raising the prices and serving the film as we see fit, and every time we tried to raise the price or did not give a man a reel of film that he thought he ought to have, he simply went to you, and we want to stop that condition and we don't want you around any more."

He said, "I realize it is only a few days more left between now and the expiration of your license. I am willing to help you get the money, get you some money for your plant. You have had all your profits for the past couple of years. You say your plant has made all that money. Suppose we had put you out of business two years ago, you would not have had that profit. Figure that profit with what we are giving you now, and see if we are not giving you a good liberal price." I said, "I am awfully obliged to you. I am a thousand times obliged to you for your having let us exist until now. I realize you could have thrown us out in the street the same as the others. But if you say we cannot have our license reinstated, do the best you can, and give me the best price you possibly can." He said, "Let me have a talk with Kennedy. After I have had a talk, we will probably send for you, and everything will be all right." With that I left him.

Mr. Grosvenor, I am giving you the conversation, both with Mr. Kennedy—with the three, with Mr. Kennedy, with

- 1 Mr. Waters, and Mr. Berst, and will continue to give you the conversation of all of these other men to the best of my recollection. It might not be the exact words. I do not think that I could for a moment quote the kind of language that would show the strong meaning or the strong language that they used in connection with this entire thing.

Q. What I want is the substance of the conversation and the subject matters discussed? A. Exactly.

Q. Did you have any talks with Mr. Albert Smith? A. I did.

- 2 Q. About this time? A. I did.

Q. Mr. Albert Smith was one of the Executive Committee of the General Film Company? A. I think he was an officer of the three companies, if I am not mistaken. Your record probably shows.

Mr. CALDWELL: Any conversation with Mr. Albert Smith is objected to on the same grounds.

- 3 The Witness: I know that he was one of the Executive Committee of the General Film Company. I know he is an officer of the Vitagraph Company, and I think he holds some sort of an office with the Moving Picture Patents Company.

By Mr. GROSVENOR:

Q. Please state—

Mr. KINGSLEY (interrupting): I move to strike out what the witness may think regarding the offices which Mr. Smith holds in the Motion Picture Patents Company.

- 4 By Mr. GROSVENOR:

Q. Please state how that conversation or interview with Mr. Smith arose, where it was, and what took place, to the best of your recollection? A. I went to the factory of the Vitagraph Company, and there met Mr. Albert Smith, and my object of going there was on account of the Greater New York Film Rental Company receiving its cancellation of license.

Q. That is, your interview was after November 14th? A. After the cancellation of the license, yes, sir.

Q. Yes. A. I informed him of the fact that my license had been revoked, had been cancelled, and he said he knew all about it. He said, "Fox—" 1

I am going to say just a few words prior to that—in this regard, if you please. The conversation between Smith and me was of an absolutely confidential nature, and in an action that the Greater New York Film Rental Company brought against various people, I refrained from putting any part of that in my affidavits, because Mr. Smith told me that what he was saying to me was confidential, and purely on account of his extreme friendship for me. To my great surprise, when they filed their answering papers, Mr. Albert Smith made an affidavit and said that I had called on him, and gave in substance a conversation that I was supposed to have had with him. Then, on the advice of my attorneys that they thought that the Courts ought to know the whole truth, and any confidence or any conversation that was had in confidence with Mr. Albert Smith, in view of the fact that he had misrepresented this conversation to the Courts, that I ought to reveal the confidential conversation as set forth in our answering affidavits. 2

Q. This conference which I am asking you to talk about, which you had with Mr. Albert Smith, was not referred to in any way in this affidavit of December 16th, 1911? A. It was not. But it is— 3

Q. (interrupting): It was not in that affidavit? A. No.

Q. I show you an affidavit signed by you dated December 27th, 1911, which refers to an interview with Smith. Please read that and see if that refreshes your recollection? A. (The witness reads): Yes, sir.

Q. And state what was said in that interview you had with Mr. Albert Smith. Was anyone else present? A. No, sir, just Mr. Smith and I. 4

Mr. KINGSLEY: Is that that confidential conversation?

The Witness: Yes, sir.

By Mr. GROSVENOR:

Q. Proceed. A. I had taken somebody else with me, but I did not take him into the room. He waited on the



1 outside with me. I walked into Mr. Smith's office and he  
smiled. He said, "I know what you are here for, son." He  
said, "You know, for the past year, I have been fighting  
like the devil for you, and arguing against the wisdom of  
the cancellation of your license, and during all this period, I  
seem to have had Mr. Berst's, of Pathe Freres, support in  
every one of my arguments on the floor at every one of these  
manufacturers' meetings. Between Berst and myself and  
one or two others, we were able to get to vote with us, we  
were always able to prevent the cancellation of your li-  
cense." He said, "At the last meeting, they brought the  
2 matter up again, and I rose to the floor and made a lengthy  
address, and told them why it should not be cancelled, and  
gave the various reasons, and, as I had done heretofore;  
and heretofore, when I sat down, Mr. Berst would generally  
rise and say the same thing. This time when I sat down I  
looked in Berst's direction, and he did not rise. The  
Chairman asked was there anything else to be said about  
it, and no one answered, and they put it to a vote, and they  
put it over. They voted to cancel your license." I said,  
"Berst still feels friendly, I have seen him—I know that you  
are friendly, probably we can get them to change their minds  
3 and show them it is bad policy to do this." He said, "Fox,  
there is no use trying." He said, "This is all wrong; it is  
against my liking, and against the liking of our concern.  
We realize that we are monkeying with the fire; we know  
that if you do not sell to us, we are going to get a fight;  
we know of your past record, what you have done for  
motion pictures, when the authorities—at the inception of  
the business, when the authorities were objecting to the ex-  
hibition of pictures. You have always led the fight for  
everybody, and I sort of feel that you are going to do it  
again. I tried to explain that to these men, and tried to  
4 tell them that it was all wrong, that I would rather see you  
in. I tried to tell them that it would look better to the out-  
side world to have one man outside of our combination. We  
could not be charged with having an illegal combination  
then. I thought I would want to leave you for the alibi,  
and I have been able to do that for quite a while, but I  
cannot do that any more. They simply made up their minds  
they were going to get you out of the way, and I suppose  
they will do it." I said, "I suppose you know I have seen  
Kennedy and I have seen Berst, and I do not seem to get



even a fair price for it." "Oh, well," he said, "I think they  
are all ready to pay you the money and a few dollars more  
or less ought not to make a whole lot of difference to you.  
Clean up the situation." He said, "Let me handle it for  
you. Let me see Kennedy and see what I can do. I will  
try and get the Executive Committee to meet, and I will re-  
port to you later." "Now," I said, "Smith, I look for the  
protection of your concern. On my very inception in this  
business, the day I went into the business, the first man I  
ever spoke to when I entered this business, was your concern;  
the first film I ever purchased in my life was from your con-  
cern." I said, "We have traded together for a good many thou-  
sands and thousands of dollars, and I sort of feel that you  
ought to help me, and I don't want to sell out and don't want  
to take any money for this plant, and I know you are  
influential enough with these men and can show them the  
right from wrong, and you ought to be able to convince them  
to reinstate my license." He said, "Fox, if you are going  
to send me on that mission, I am not even going to try. I  
tried that at the last meeting." He said, "I was the most  
dumbfounded man in the world when I found that Berst had  
sat down." He said, "You know that our organization is  
the same as any other. It is generally led by one or two  
men who are in power. Between what Mr. Kennedy says,  
and one or two others, the rest of them are like a lot of  
sheep, and a lot of lambs, and they all follow suit, and I  
suppose they brought pressure to bear on Mr. Berst or he  
would not have voted against you. Now, that is all done;  
I cannot get it reopened. If I could not get it beaten on  
the floor before the letter was written to you, I am sure I  
cannot do it now. The best I can do is to try to get you a  
settlement and try to get you some money."

With an assurance that he would try to arrange for  
a settlement and get the money, I left. He told me  
later that he was not able to get Mr. Kennedy to answer his  
telephone conversations, although he knew Mr. Kennedy  
was in New York. That Mr. Kennedy was denying himself  
out to him. I called his attention to the fact that the days  
were pretty short when this license had to run out, and  
he said, "I know it; I have tried very hard, and I will keep  
on trying, and I will do everything in my power to call this  
meeting." And from then until the next time I seen Mr.  
Kennedy, I did not speak with Mr. Albert Smith.

1 Q. When did you next see Mr. Kennedy? You may state whether or not at this meeting with Mr. Smith, Mr. Smith made any statement about your being jobbed, or used that phrase? A. Yes, sir.

2 Q. What was said in that connection? A. You know, we talked for an hour and a half, and good Lordy, a man would have to be a dictagraph or a phonograph to be able to repeat it word for word. He said, "Fox, I know in my heart, and I know just as well as you do that they have got no reason to cancel your license under the license agreement that they have gave you. I know, as you do, that you have got your concern to live up to it religiously and carefully. They have tried every which way to find fault with you and could not do it. I know in my heart and soul that they jobbed you. I told them on the floor that they jobbed you." He said, "Under that condition, what is the use of trying to go back and try to get them to reinstate your license?" He said, "You cannot do it. Let me go and try to get your money for you."

3 Q. What was this meeting of the manufacturers that you testified Mr. Smith spoke about? A. That was the meeting at which they voted—all of the manufacturers, as he told me, voted for the cancellation of my license. At the meeting of the manufacturers.

Q. And he called it a meeting of the manufacturers? A. A meeting of the licensed manufacturers, yes.

4 Q. Going back to that question which I asked, which was not answered because I interrupted you. When did you next see Mr. Kennedy? A. A few days later I called at Mr. Kennedy's office. I said, "Mr. Kennedy, I have been anxiously waiting to hear from you. I have had Mr. Berst ring you up, and I have had Mr. Smith try to see you." He said, "I have been very busy." I said, "You have let this thing dangle along. I have got only two days more to live under this cancellation notice." I think it was on Friday that I seen him. I said, "Between now and Monday I am out entirely. I will have nothing to do at all." He said, "Now, we will do it to-day. What can I do for you?" He said, "Have you made up your mind as to what you want?" I said, "Have you tried to get me the \$125,000?" He said, "I have tried. It is useless; I cannot get you anything more than the schedule calls for."

Q. Were you anxious to sell out? Was it your inten-

tion to sell out? You have named these figures. Was this a figure that you set after they said you would have to sell out? A. I had been pleading, "Please reinstate my license." That I did not want to sell for any money at all, no matter what they offered me. If they would have assured me that they were not going to cancel my license, I would not have sold my place of business for five nor \$600,000, because my plant was earning from \$60,000 to \$75,000 a year. I did not want to sell a business of that kind. 1

Q. Then it was after they had stated that the license was to be cancelled and remain cancelled that you discussed the terms of the sale? A. It was after they had made it very clear to me that it was time to sell, and told me what happened to a few others, that I agreed to put a figure on it at all. 2

Q. Going back to this interview with Mr. Kennedy. A. He said, "There would not be a chance of getting any more than the schedule calls for." He said, "I told you about the schedule once before." I said, "Mr. Kennedy, what does the schedule call for?" I said, "I can give you the amount; I remember what you said the last time." He said, "No, let me look it up again." He put his hand in his inside coat pocket and got out a slip of paper, and then went in to the safe and took out another slip of paper. He said, "You know, I have got to be very careful, Mr. Fox. These schedules were made up as a secret schedule. I keep half of the code in my pocket and the other half in the safe, so that if I lose the other half nobody will know anything about it." And he brought both and said something about \$78,000 or \$80,000. I reminded him he said \$89,000. He said he had a faint recollection that he said \$89,000 the last time, or \$90,000. Anyway, if he said so the last time, he was willing to stand by the figure he mentioned. I said, "See if you cannot give me a hundred thousand." I was trying to get as much as I could. Remember, I am dying now. Down and out two days later, and everybody pretending to be my dearest friend. 3 4

MR. KINGSLEY: I object to that as not part of the conversation which the witness was asked to repeat. I move to strike it out.



1 The Witness: I think it ought to be stricken out, myself.

Mr. KINGSLEY: Will you consent, Mr. Grosvenor, that that be stricken out?

Mr. GROSVENOR: Go back and read it.

The stenographer repeats the following portion of the answer: "Remember, I am dying now. Down and out two days later, and everybody pretending to be my dearest friend."

Mr. GROSVENOR: I think that properly should stand.

2 Mr. MELVILLE: I object to that as not part of the conversation he had. This is his present impression.

Mr. MELVILLE (continuing): This is not a conversation he ever had with anybody, or a remark he ever made before to-day.

Mr. CALDWELL: And I further object to it on the ground it is not responsive to any question asked the witness.

Mr. GROSVENOR: The witness is describing a situation as it was at the time of the different interviews, and I think it is proper.

3 Mr. KINGSLEY: I wish to object to it, then, on the ground it is immaterial, incompetent and irrelevant, giving the opinions and impressions of the witness, being in effect a summing up and not being responsive to any question that has been asked.

4 A. (continuing): I said, "Mr. Kennedy, if you profess to be my friend, I know that Berst told me that he was my friend; I know that Smith told me that he was my friend, and having three friends, I ought not to have any trouble getting a few thousand dollars more for my plant. Suppose you confer with one of the other executives and find out whether they won't consent to allow you to spend \$100,000 for this plant." He said, "To show you my heart is in the right place, I will do it." He asked his girl to get Mr. Berst on the telephone. He said, "Is this you, Berst? Fox is in my office now, and he is ready to sell his plant to the General Film Company. He wanted me to ring you up to try to get him a hundred thousand dollars." There was a wait then, I don't know what the man said at the other end of the wire, but he hung the wire up, and



as he did it he said, "Wasn't that careless of me, I should have left you on the other end of the wire somewhere, so that you could have heard what he said." He said, "He says he is your friend." He said, "All these fellows are your friends, but they make me the Patsy. They want to be the good fellow, and they are making me the bad fellow. He said that the schedule showed \$78,000, and that is all he was in favor of paying." He said, "I am awfully sorry I did not let you hear what he said on that telephone." I said, "Oh, yes, that is all right, Mr. Kennedy." He said, "I am not going to ring up Albert Smith." He said, "Because Smith really is your friend, and he would vote for \$150,000. He stuck by you always and fought your battles at every one of our meetings." He said, "I don't want to get into any rows. You had better let me stand by what I originally offered you. You had better let me give you the \$90,000." I said, "Mr. Kennedy, beggars can't be choosers. My life is coming to the last. On December 4th, the Greater New York shall be no more. I suppose the best thing I can do for our company is to agree to accept the sum of money that you state." He said, "All right. We will draw the contracts and fix everything up, a bill of sale and so forth."

We discussed how long the lease still had to run on the premises that I occupied, and that they would assume that lease to the expiration, and discussed the employees, and the various details of the business, and I said, "Now, Mr. Kennedy, while you are on these details, allow me to suggest to you that I personally operate a chain of theatres in New York, and I am especially interested as to the film service for next week. Now, the license calling for its cancellation on December 4th, what will I do for my service at my theatres, and for the service of my customers?" "That is so, son," he said. "We have got to go into that very carefully. Now," he said, "you know, in the first place, the General Film Company has got no right to buy your plant without a license, because without a license, what good is your business to us?" He said, "I will have to have—I will have to arrange to have your license reinstated."

Q. That is, as a branch of the General Film Company, or what did he mean? A. Reinstate the business back to the Greater New York Film Rental Company, he said. He

- 1 wanted to have the business—the license reinstated, with the Greater New York Film Rental Company, so that the General Film Company then could buy the Greater New York Film Rental Co. He said, “Of course, if you have that license reinstated, then you might keep on doing business the same as before until all the papers are signed, are signed up, and that will take care of the film service for your theatres that you are worrying about.” He said, “Now, just a minute, and I will arrange that.” He called up Mr. Marvin. He said, “I have got Fox, of the Greater New York, here, and I am arranging to buy his plant for
- 2 the General Film Company.” He said, “You know Mr. Marvin is the Vice-President of the Motion Picture Patents Company. He is the man that signed the cancellation of your license, didn’t he?” I said, “I think he did.” He said, “I am negotiating to purchase Fox’s plant; in fact, we have agreed on the terms, and the price and everything, but,” he said, “I find that I do not want to buy the plant without the license is reinstated.” He said, “You know, Marvin, I don’t want this same condition to exist in this case as it did in the Marcus Loew case, as it did in the People’s Vaudeville
- 3 —the People’s Exchange, where, instead of reinstating the license, you just extended the cancellation notice for a few days longer and in signing the papers that were necessary for the sale of that plant, you had to write several of those letters, and,” he said, “it was quite a complicated affair. In this case I want the license reinstated, so that the General Film Company can purchase the business of the Greater New York Rental Company.”

I wished the gentleman many happy returns of the day. He said he would send the papers to my office, and I left the gentleman.

- 4 Q. Was anything said by Mr. Kennedy at that meeting as to the method of payment for your business? That is, whether it was to be in part preferred stock, and part deferred payments, and in part cash. What, if anything, was said about that? A. Why, he said, “You know, Fox, the details of this, I took up with you the last time.” We had discussed when he had offered me his original price at 200 Fifth Avenue, he there told me the amount of cash, the amount of deferred payments, and the amount of stock. I think it was preferred stock, or common stock. I don’t

know which. That goes with the plant. And at that meeting, we had arranged that he was to pay, I think it was \$24,000 cash. I don't remember how much in deferred payments, and I don't remember how much was the amount of the stock. 1

Q. Payment was to be made in those three classes? A. It was to be in those three classes, and the amount of cash was to be \$24,000.

Mr. KINGSLEY: By that, you mean immediate cash?

The Witness: Yes, sir. The payments will show in the contracts that they forwarded to us. I think my attorneys still have that contract. They will show exactly the terms under which they were to purchase. 2

By Mr. GROSVENOR:

Q. Going back to this conversation which you have testified Mr. Kennedy had with Mr. Marvin relating to the revocation of the cancellation of your license, will you state whether or not anything was said by Mr. Kennedy in your presence to Mr. Marvin about conferring with the other manufacturers? A. I beg your pardon. That is right. He said, "Now, Marvin, of course"— 3

Q. (interrupting): Kennedy said? A. Kennedy said, "Now, Marvin, of course, you will have to have the votes of the manufacturers to be able to do this." He said, "I vote for the Biograph Co., you are voting in favor of it. I know that Pelzer is at the Edison plant in town, and ring a few more of them up on the long distance telephone, and when you have got a majority, then you write the letter recalling the cancellation of that license and the reinstatement of that license agreement." 4

Q. Did you receive a revocation of the cancellation? A. In pursuance to that, the next day I got a letter from the Motion Picture Patents Co., signed by Mr. Marvin as its Vice-President, recalling the cancellation.

Mr. GROSVENOR: I offer it in evidence.

The paper is received in evidence and marked Petitioner's Exhibit No. 138, and is as follows:



1

**Petitioner's Exhibit No. 138.****MOTION PICTURE PATENTS COMPANY**

80 Fifth Avenue, New York

December 1st, 1911

Greater New York Film Rental Company,  
116 East 14th Street,  
New York City.

2

Gentlemen:

Referring to our letter of November 14th, notifying you of our intention to terminate your license on the fourth day of December, Nineteen Hundred and Eleven, we hereby notify you that said notice of termination is hereby withdrawn.

Yours truly,  
MOTION PICTURE PATENTS COMPANY  
By H. N. Marvin Vice Pres.

HNM/ACL.

3

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By Mr. GROSVENOR:

4

Q. You may state whether or not Mr. Kennedy said anything to you at any of these conferences between you and him in regard to the size of his company or its extent or in respect to the relations of your company, the competition of your company in the trade, with his company? A. At the last conference had, when the transfer or the sale was agreed upon, he said, "Well, that is the finish of my work. This is the end of what I set out to do. You have been the last man in the field, and now with our satisfactory arrangement between you and the General Film Company, my work is practically ended." He said, "You realize that this was not done through any personal animosity to you at all or because we did not like you. It was done because the General Film Company had to have the field to itself as it prepared and as it set out to do, at the very beginning, and you were a stumbling block. You were in constant competition with us, and that



is the reason of our being desirous of purchasing your plant.” 1

Q. You may state whether you received any letter from Pathe Freres dated November 20th, 1911— A. (interrupting) : I did.

Q. (continuing) : After the cancellation of your license by the Motion Picture Patents Co.? A. I did. I got a letter on November 20th from Pathe Freres, which was six days after the date of the cancellation. In this letter they wished me very good luck in any other line of business—

Mr. GROSVENOR: I offer it in evidence. 2

The paper is received in evidence and marked Petitioner's Exhibit No. 139, and is as follows:

**Petitioner's Exhibit No. 139.**

Offices in all the principal cities of the World

PATHE FRERES

MOTION PICTURES

Published of the Film  
“Pathe's Weekly”  
Illustrating World Wide  
Current Events  
Of Universal Interest

3

Trade Mark

Barcelona	Moscow
Berlin	New York
Bucarest	Odessa
Budapest	Paris
Buenos Ayres	Rio Janeiro
Calcutta	Rostoff
Hongkong	Shanghai
Kiew	Singapore
London	Stockholm
Madrid	St. Petersburg
Melbourne	Sydney
Mexico	Vienna
Milan	Warsaw

4



Mr. KINGSLEY: The question is, did you do it?

1

The Witness (continuing): By Mr. Rogers.

Mr. KINGSLEY: Did you execute it?

The Witness: No. On his advice, I did not.

Mr. GROSVENOR: Then you received a subsequent notice of cancellation?

The Witness: I did, sir.

2

By Mr. GROSVENOR:

Q. Prior to this subsequent notice of cancellation, had you stated, or had any one at your direction stated to Mr. Kennedy that your company would not sell?

Mr. KINGSLEY: I object to that if he intends to state what somebody else stated. If he states what he himself stated, I do not object.

3

The Witness: I directed Mr. G. A. Rogers to ring up Mr. Kennedy, and in my presence he did ring up Mr. Kennedy and told him that he had advised the Greater New York Film Rental Company not to sell out under the terms of the contract as they submitted it. That was on December 6th.

By Mr. GROSVENOR:

Q. When did you receive that second notice of cancellation? A. Just as soon after they got that telephone conversation, as possible.

4

Mr. KINGSLEY: I object to that and move to strike it out as comment.

The Witness: December 7th. That is right, it is not comment. That is right.

By Mr. GROSVENOR:

Q. December 7th. And is this the notice of cancellation

1     dated December 7th, 1911, signed H. N. Marvin, Vice-President (indicating)? A. Yes, sir.

      Q. Which you have referred to? A. Yes, sir; no sale, no license.

      Mr. KINGSLEY: I move to strike that out as comment.

      Mr. GROSVENOR: I offer that in evidence.

2     Mr. KINGSLEY: I object to that as incompetent, immaterial and irrelevant, and not binding on the defendants, because no connection has been proved between the conversation which Mr. Rogers had with Mr. Kennedy, pursuant to the directions of the witness, and the Motion Picture Patents Company as represented by Mr. Marvin.

      The paper is marked Petitioner's Exhibit No. 140, and is as follows:

**Petitioner's Exhibit No. 140.**

3     MOTION PICTURE PATENTS COMPANY

      80 Fifth Avenue, New York

December 7th, 1911.

Greater New York Film Rental Company,  
116 East 14th Street,  
New York City, N. Y.

Gentlemen:

4     Pursuant to the right reserved by this Company under the first clause of Section Nineteen of the Conditions of License forming part of the Exchange License Agreement existing between you and this Company and bearing date the eighteenth day of January, Nineteen Hundred and Nine, we hereby notify you of our intention to terminate said license and that the same will terminate at eight o'clock A. M. on Monday the twenty-fifth day of December, Nine-



Hundred and Eleven, unless sooner terminated by this Company for any breach of the Conditions of said license. 1

Yours truly,  
MOTION PICTURE PATENTS COMPANY  
by H. N. Marvin  
Vice President.

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By Mr. GROSVENOR:

Q. This notice which I have just put in as Exhibit No. 140 and dated December 7th, 1911, is a notice of cancellation effective Monday, the 25th day of December, 1911. You may state whether or not the manufacturers discontinued sending you film about that time in December? A. One of the manufacturers did. 2

Q. What steps, if any, did you take to prevent this cancellation going into effect? A. When the Biograph Company failed to deliver film, we applied to the State Courts for relief. An injunction.

Q. That was in December, 1911? A. Yes, sir.

Q. And have you been in constant litigation— A. (interrupting): We have been and still are. 3

Q. (continuing): With the Patents Company or the General Film Company, from that day to this, in an effort to preserve the business of the Greater New York Film Rental Company? A. We have been in constant litigation from that day to this, and still are engaged in litigation trying to prevent them from discontinuing the service of film. And only three or four—

Q. (interrupting): That will do for that answer. You may state whether or not you have received any further notice of cancellation from the Motion Picture Patents Company? A. That I think Mr. Rogers got. 4

Q. You may answer that question yes or no? A. Yes, sir.

Q. And was that during the year 1913? A. Yes, sir.

Q. And within a few weeks? A. Within two weeks of February 28th. Within two weeks of to-morrow, the cancellation notice read that it will become effective, and that no more film will be shipped after February 28th, 1913.

Q. And you may state whether or not the cancellation

1 has been revoked. A. I have received a letter in the mail yesterday informing me that that cancellation is withdrawn.

At this point an adjournment is taken until 2:30 P. M. at the same place.

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New York City, February 27th, 1913.

2 The hearing was resumed at 2:30 o'clock P. M. on this February 27th, 1913, at Hotel McAlpin, pursuant to adjournment.

The appearances were the same as at the morning session.

Thereupon, WILLIAM FOX resumed the stand for further examination.

Direct examination continued by Mr. GROSVENOR:

3 Q. Mr. Fox, you have produced a copy of the letter dated May 16th, 1912, addressed to your company and signed by Motion Picture Patents Company? A. Yes.

Q. Was that received by your company? A. Yes, that is right.

Q. About the time given in the letter? A. Yes.

4 Mr. GROSVENOR: I offer the letter of May 16th, 1912, addressed to the Greater New York Film Rental Company and signed Motion Picture Patents Company as Petitioner's Exhibit No. 141. I offer that in evidence subject to substitution of the original. I do not think there will be any question about its being a true copy.

**Petitioner's Exhibit No. 141.**

"May 16th, 1912.

To Greater New York Film Rental Company,  
New York City, N. Y.

Gentlemen:—

We are advised that you have requested that the actual

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termination of your relationship as licensee should be postponed. Although the license agreement existing between this Company and yourself has been lawfully cancelled, we hereby express our assent to such arrangement upon condition that the Motion Picture Patents Company waives no rights which it now enjoys either by reason of the decision in the litigation between yourself and it, or with reference to the entire and complete fulfillment by you during the continuance of your relationship hereunder with this Company, of all of the terms, provisions and stipulations contained in the license agreement, cancellation notice of which was heretofore served upon you, and upon the further condition that the arrangement provided for by this letter may be terminated at any time by the Motion Picture Patents Company on fourteen days' written notice to you.

Very truly yours,  
MOTION PICTURE PATENTS COMPANY.  
By H. H. N. Marvin, V.-P."

By Mr. GROSVENOR:

Q. You have also produced a letter dated February 13th, 1913, addressed to your company and signed by George F. Scull, Vice-President. Is that the notice of cancellation which you testified to this morning as having been received by your company? A. Yes, sir.

Mr. GROSVENOR: I offer in evidence the letter of February 13th, 1913, addressed to Greater New York Film Rental Company, and signed Motion Picture Patents Company, by George F. Scull, Vice-President, as Petitioner's Exhibit No. 142.

1                    **Petitioner's Exhibit No. 142.**

**"MOTION PICTURE PATENTS COMPANY,**

**80 Fifth Avenue, New York.**

February 13, 1913.

Greater New York Film Rental Company,  
116 East 14th Street,  
New York City.

2  
Gentlemen :—

YOU WILL PLEASE TAKE NOTICE that the arrangement provided for by our letter to you of May 16, 1912, is hereby terminated, such termination to take effect on Friday, February 28th, 1913, at 12 o'clock midnight, and that thereupon your relationship as licensee will actually terminate in accordance with the arrangement provided for by said letter of May 16, 1912.

3                    Yours very truly,  
                  MOTION PICTURE PATENTS COMPANY.  
                                  By George F. Scull,  
  Vice-President.  
GFS-DP."

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By Mr. GROSVENOR:

4        Q. Mr. Fox, you also have interests in the motion picture business in the exhibiting end of the business?    A. Yes, sir.

Q. How many theatres exhibiting motion pictures have you an interest in?    A. At the present time, without considering those in course of construction, and those being used for other purposes, there are fourteen.

Q. Do you own a number in New York City?    A. I do, sir. By that I mean to say, that I own large blocks of stocks in companies that own theatres in New York.

Q. That is what I mean, you are substantially interested?  
A. In most cases the majority stockholder.



Q. Moving picture theatres are generally classified, are they not? A. Yes, they are in three different classes. 1

Q. Just describe the three classes. A. Well, I should say four different classes.

Q. Please describe those four different classes. A. Class one are the small places in Greater New York, seating not more than 299, where pictures are exhibited, that is, 299 seats, and that is considered to-day as a "nickellette." They charge five cents, the majority of them having an admission price of five cents.

The next are four or five large class theatres on the style of the Herald Square Theatre and the Circle Theatre, New York, and one known as the Regent Theatre, at 116th Street and Seventh Avenue, where pictures are shown exclusively and the admission price is greater, ten cents or more. 2

The third class of theatres that operate motion pictures are those that I operate and others operating on similar lines as mine, having fifty per cent. of vaudeville and fifty per cent. of motion pictures, with prices of admission ranging from ten cents to fifty cents.

The fourth class of theatres exhibiting motion pictures are vaudeville theatres, that charge prices of admission anywhere from twenty-five cents to one dollar, and they use one reel of motion pictures as a part of their performance, intermingled with the vaudeville, or one-tenth of their program being motion pictures. 3

Q. Then of the first four classes, the class which you have last mentioned, is the class where the motion pictures shown are merely one item in a long program? A. Yes, sir.

Q. The third class are the theatres where half of the program is motion pictures and the other half vaudeville? A. Yes, sir. 4

Q. And the second class is the class comprised of those three theatres you have just named—are there any others? A. The Circle, the Herald Square and the Regent. At the present time the Park Theatre is used for motion pictures. They are now showing a play called "Miracle."

Q. The first class are theatres seating less than 300? A. Yes.

Q. And that classification is adopted by the ordinances in the City of New York, is it not? A. Yes, sir; those the-

1   atres are operated under a common show license, which permits them to have no more than 299 chairs.

Q. And the larger theatres belong to the third class?  
A. Yes, sir.

Q. Now, to which class do all these theatres in which you have a substantial interest belong? A. To the third class, where the pictures and the vaudeville are about half and half of the program.

Q. Now, what is the largest moving picture theatre in which you have an interest belonging to this third class?  
2   A. The Academy of Music, on Fourteenth Street, a company in which I have a substantial share of the stock, which is the lessee of the theatre and for which we pay \$100,000 a year as annual rental. The property, I think, is held by the owners at probably \$2,000,000.

Q. How many people does that theatre seat? A. Between 3,000 and 3,200 or 3,300.

Q. Then there is a large theatre opposite the American ball park, or ball ground? A. That is one of the theatres that I have built.

Q. What is the name of that theatre? A. Audubon.

3   Q. How many does that seat? A. It seats about 3,000, and I built that at a cost for land and building of \$1,200,000.

Q. Then there is another theatre up on 96th Street?  
A. The Riverside Theatre.

Q. How many does that seat? A. That seats about 1,800, and the cost of the land and the building is about \$900,000.

Q. Now, those theatres that you have last named, the Academy of Music, and the one on 165th Street, and the one on 96th Street and Broadway, those three theatres are all classed as moving picture theatres?  
4   A. Yes, sir; and all others that I operate are about that size, and are almost as valuable as those I have mentioned.

Q. And those theatres are theatres where the admission ranges from ten cents to fifty cents? A. Yes, sir.

Q. And are half moving pictures and half vaudeville?  
A. Yes, sir; about that.

Q. Are all those theatres licensed theatres? A. Yes; licensed by the City of New York under a theatrical license.

Q. Are they all licensed theatres, in the sense of being licensed by the Motion Picture Patents Company? A.

Yes, they all have a license with the Motion Picture Patents Company. 1

Q. Now, referring generally to the theatres in the City of New York, are the larger theatres, I mean in size and seating capacity, licensed or unlicensed theatres? A. Ninety-five per cent. of the large theatres in Greater New York are licensed by the Motion Picture Patents Company. I say ninety-five per cent. in view of the fact that I do not know of more than one place where unlicensed pictures are shown at the present time in a large theatre.

Q. In what places outside of New York have you an interest in moving picture theatres? A. The Washington Theatre, in Newark, and the Nelson Theatre, in Springfield, Mass., and the Grand Opera, in New Haven, Conn., and the Lyric, in Bridgeport, Conn. 2

Q. And in those cities that you have just named are the larger theatres the licensed theatres? A. Yes, sir.

Q. And the same thing is true of those cities as is true in New York? A. Yes, sir.

Q. What effect, if any, upon the selection of pictures by you for exhibition in your theatres does the provision in the license agreement barring out independent films have? A. It prevents us from giving the public the best there is made, and by that I mean this: There are several manufacturers at the present time, and have been for the past few months, the past year, say, of independent film, that we are unable to exhibit in our places of exhibition on account of a restriction clause, which we would like to exhibit, and there are many reels of film made by licensed manufacturers that are not worthy of showing anywhere, or in any place of exhibition, on account of lack of merit, that we are obliged to exhibit in places of exhibition on account of the number of reels required to make the program; and in our rental exchange we have the hardest kind of a time in prevailing upon some of our exhibitors to accept some of the reels that we must purchase from the licensed manufacturers, that they are not willing to accept on account of lack of merit, and in substitution of those reels if we were able to show unlicensed films that have merit it would be a great benefit to the public at large. 3 4

Q. You may state whether or not what you have said applies to what are known as kinemacolor pictures. A. I should take much pleasure in exhibiting kinemacolor pic-



1   tures to the patrons of my theatres, but I am not able to do it unless I am willing to violate the license agreement with the Motion Picture Patents Company, and therefore I am unable to show it.

Q. What are the kinemacolor pictures? A. That is a process that instead of exhibiting pictures on a screen in black and white color—

Q. That is, the monochrome? A. Yes; that makes it possible to show it in the true color, the color of the costume, the face, the different colors.

2   Q. Are these colored pictures the latest development in the moving picture art? A. To the best of my knowledge, they are.

3   Q. Do you find that the patrons of theatres located in different sections of the city desire different kinds of pictures; that is, will the patrons in one section of the city prefer a certain class of pictures and the patrons in another section of the city prefer a different type? A. It depends upon the population you are catering to, or on the class of people you are trying to entertain, as to the kind of pictures they like best, but on account of this condition of not being able to interchange the licensed and unlicensed film we are unable to do anything else but to show them everything that is made, whether they like it or whether they don't.

Mr. GROSVENOR: You are excused, Mr. Fox, until 2:30 o'clock to-morrow.

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4   Thereupon LOUIS ROSENBLUH resumed the stand for cross examination.

Cross examination by Mr. KINGSLEY:

Q. Mr. Rosenbluh, what is your position with The Greater New York Film Rental Company? A. General Manager.

Q. When did The Greater New York Film Rental Company go into business? A. In 1907.

Q. How long was it in business at the time of the adoption of the Edison license agreement? A. About a year.



Q. What arrangement did you have with the Edison licensees regarding the return of film which you secured from them? A. None, other than was in the sales agreement.

Q. What was that arrangement in the sales agreement? A. There was some clause in there which is in the printed paper; I don't know how it reads.

Q. Was not there a clause in the sales agreement with the Edison licensees by which The Greater New York Film Rental Company was compelled to restore films, or return films, at the expiration of six or seven months? A. There was such a printed statement in the sales agreement.

Q. Was there not a clause in the agreement which provided that after the expiration of six months these films which you say you bought were to be returned to the licensees from whom you bought them? A. Such a sentence was printed in that sales agreement, which was modified later on.

Q. So that all of the film which you received in pursuance of your contract with the Edison licensees was received conditionally? A. It was understood—

Q. (interrupting): Now answer me. All the film you received from the Edison licensees, and by "you" I mean your company, was received conditionally, was it not, in pursuance of the agreement? A. It was according to the sales agreement, which was—

Q. That is an answer. So that the sales to you were conditional, is that not true? A. There was—

Q. (interrupting): Just a moment. I am not asking you that—the sales to you were conditional, were they not? A. I don't know what you mean by "conditional." There were several conditions.

Q. But the sales to you were subject to the return of the film at the expiration of six months, were they not, by that agreement? A. It was contrarily understood, though.

Q. Now, Mr. Rosenbluh, I didn't ask you whether it was contrarily understood or not, but I asked if the sales under that agreement were not conditional, were not subject to return after six months; just answer that yes or no? A. The original paper so stated, and it was then modified.

Q. Were you one of the Edison licensees at the time of the formation of the Patents Company? A. Yes, sir.

Q. And that sales agreement was still binding upon you, was it not? A. Yes, sir.

1 Q. Now, in that agreement was there not also a stipulation to the effect that you could not rent or loan films to other rental exchanges? A. Yes, I believe there was something to that effect.

Q. Yes; and that agreement was still in effect on the 7th of January, 1909, was it not, at the time you went into the Patents Company? A. Yes, sir.

Q. And was there not also a clause in that agreement to the effect that exhibitors were not allowed to transfer reels from one to the other? A. In which agreement was that?

2 Q. In the Edison license agreement, to which your company was a party? A. I believe there was such a clause.

Q. Now, at the time that The Greater New York Film Rental Company made a contract with the Patents Company, how many reels of film did you have on hand? A. I should judge, about 3,000 reels.

Q. And from whom had you secured those reels? A. From various manufacturers.

Q. How long had you been dealing with the Edison licensees at that time? A. About nine months.

3 Q. So of these 3,000 reels of film that you had on hand you had secured a part from the Edison licensees during the nine months preceding? A. Yes.

Q. Now, what was the value of these films? A. The purchase value?

Q. No; I am asking you what was the value of them; you have answered in your direct examination that it was \$300,000. A. The purchase value.

Q. Was that the value of the film? A. The purchase value.

Q. That was the purchase value? A. Yes.

4 Q. And some of these films were nearly two years old, were they not? A. They may have been even older than that.

Q. What was the real value of them? A. I should judge about \$100,000.

Q. So that when you stated on your direct examination that the value of these reels was \$300,000, you knew as a matter of fact that the value of them, even according to your own judgment, was not more than \$100,000? A. Whatever answer I made was an answer that I thought would answer the question.

Q. That is, you thought it would suit the purpose at that time? A. I don't remember what the question was. 1

Q. How many films have you on hand at the present time? A. I should judge about the same amount, about 3,000.

Q. Now, did you say on your direct examination in response to a question asked by Mr. Grosvenor that you were obliged at the beginning of this Patents Company arrangement to return all of the film that you had theretofore collected? A. I don't remember that I said that.

Q. Didn't you say at page 382 in the course of your direct testimony, when questioned by Mr. Grosvenor: "Q. You were then obliged at the beginning of this Patents Company arrangement, to return all the film which you had theretofore collected? A. Yes, sir. Q. And did you get any allowance or any consideration for the return of that film? A. No, sir. Q. It was made a condition of obtaining licensed film thereafter? A. Yes, sir. Q. How much was the value of the film which you were obliged to return about that time? A. The purchase value was about three hundred thousand dollars." Were you asked those questions and did you make those answers? A. Yes, sir. 2 3

Q. Now, Mr. Rosenbluh, I want to ask you how it was that you were compelled to return 3,000 reels of film as a prerequisite to obtain this service from the Patents Company? A. I don't quite understand that.

Q. I want to know from you whether or not you were obliged to return 3,000 reels of film as a prerequisite to obtaining service from the Patent Company's licensees? A. We were to return a similar number of feet that were delivered to us at a certain time.

Q. Now, you had on hand 3,000 reels? A. Yes, sir. 4

Q. You had not returned any reels since the time you had begun to take service from the Edison licensees? A. No, sir.

Q. You had not returned any film? A. No, sir.

Q. So that at the time you entered into this arrangement with the Patents Company's licensees you had all the reels you had ever purchased, except those that might have been worn out or destroyed? A. Yes, sir.



1 Q. Now, did you in January, 1909, return 3,000 reels to anybody anywhere? A. No, sir.

Q. Did you in fact return that number or any number? A. No, sir.

Q. Did you in March return that number or any number? A. No, sir.

Q. Did you in April return that number or any number? A. No, sir.

Q. Did you in May return that number or any number? A. No, sir.

2 Q. Did you in June, July and August return that number or any number? A. I believe, if I am not mistaken, August was the first month, that was seven months after February.

Q. So that, beginning on the first day of January, 1909, you had 3,000 reels of film, and you were taking service of the Patents Company's licensees up to August at least without returning any film? A. Yes.

3 Q. So that you were accumulating film all the time up to August, and beginning with 3,000 reels of film, then you had considerably more than 3,000 about the first of August, 1909, is that right? A. Yes.

Q. Now, when you began to return the film, what film did you return? A. No particular film.

Q. No particular film? A. No particular film at all.

Q. Didn't you take your old film that you had for eighteen or twenty months and return that? A. Well, it depended, both the new and the old.

Q. Did you select it? A. Yes, to an extent.

4 Q. Well, was there anything in that arrangement to prevent you from selecting the film which was the most worn and most deteriorated, and to return that to the licensees? A. No, sir.

Q. That is what you did, was it not? A. At the beginning, yes.

Q. You had in your establishment some way of testing film, to see whether it was worn, whether it was in fit condition for use or not, did you? A. Yes.

Q. You knew the condition of your film from time to time, did you not? A. Yes, sir.

Q. Now, some film, of course, was rejected at times, was it not, by the people who examined it, your film clerks or splicing clerks, or whatever you call them? A. Yes, sir.



Q. And that was laid aside? A. Yes, sir.

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Q. And when the time came to ship back to the licensees you shipped back that old film which had been laid aside? A. Yes, sir.

Q. Now during the time that you were accumulating 3,000 reels under the conditional sale of the Edison licensees, what was there to prevent you making a library at that time, if you wished? A. The fact is they would not have been on hand if I had it compiled.

Q. Didn't you, as a matter of fact, have a collection of special reels at that time? A. We had a collection of all kinds.

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Q. Didn't you have a collection of special reels on hand at that time? A. What do you mean by "special?"

Q. I mean reels of special merit, I don't mean special in the sense that the manufacturer puts out in addition to the regular service. A. We had from time to time some specials.

Q. You had more or less an accumulation of reels— A. (interrupting): We made a list, a catalogue, and sent it out to these people that we were doing business with.

Q. Was there anything in your arrangement with the Patents Company's licensees which prevented you from carrying 3,000 reels of film all the time in your business? A. You say was there anything?

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Q. Was there anything in your arrangement with the Patents Company's licensees which prevented you from carrying 3,000 reels of film in your business? A. No, sir.

Q. You have always carried that, have you not, since you entered into the arrangement with the Patents Company's licensees? A. I believe so.

Q. And you have more than 3,000 reels of film on hand to-day? A. Yes, I don't know the exact amount, but I judge about the same.

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Q. You don't say you have not. Now, what was the age of the film which you were permitted to return when you began to return film of the Edison Company's licensees? A. No particular age.

Q. Did not the Edison licensees permit you to keep film for a year before you began to return it? A. We didn't return any.

Q. But the agreement was that you could return it after a year, was it not, under the Edison license agreement? A. They didn't ask for it.

1 Q. I didn't ask you that. The agreement was you could make shipments of old film, a year old? A. They never asked for any.

Q. I didn't ask if they asked for it, but I asked you if that was not the agreement? A. No.

Q. I think you stated at page 372 of your direct testimony that your company does not receive any special features, is that true?

Q. Have you read it? A. I have refreshed my memory on that. Will you recall the particular time?

2 Q. You state there: "We did not receive any special features from the manufacturers, although we applied for them." Have you received special features from the manufacturers since September, 1911? A. For a period of time we did not.

Q. I didn't ask you that. Please answer my question, have you received special features from manufacturers since September, 1911?

3 Mr. GROSVENOR: I object to the question as being confusing for the reason that it is my recollection that the witness testified that these specials, as he called them, began about May, 1912, and that prior to that time specials were given out on regular releases, and that about May, 1912, the term "special" began to be applied to those things that did not go out on regular releases.

By Mr. KINGSLEY:

4 Q. Were you asked this question and did you make this answer, page 373: "Q. Please describe what a special feature is so that it will appear on the record? A. Up to the period of 1911, special features were termed such pictures as were not among the regular releases of the manufacturers. Anything that they turned out in addition to the regular output, which each one was allotted, or had agreed to turn out, either four or five releases a week, they called special releases."

Mr. GROSVENOR: Now, on page 373 you will see he says that it started some time in May, that is, I under-

stood May, that the term "special" began to be applied 1  
to these special releases, page 373.

Mr. KINGSLEY: But he testified that in 1911 special features were in existence, and were being released.

Mr. GROSVENOR: Yes, but released on the regular releases.

By Mr. KINGSLEY:

Q. You are supplying how many exhibitors with films?

A. About 140 to 145.

Q. Are you not supplying about 150 to 155? A. No. 2

Q. When did you last count them up? A. Last week.

Q. What time? A. About Tuesday.

Q. Did you give testimony some day last week in a suit in the Federal Court before a Master? A. I don't remember being there last week—yes, I was there last week.

Q. How many exhibitors did you have in January, 1909?

A. About one hundred, I should judge.

Q. So you have had practically an increase of fifty per cent. in number of exhibitors that your firm serves since the beginning of your arrangement with the Patents Company's licensees? A. Yes, sir. 3

Q. You do not wish it to be understood that as a condition precedent to receiving the service of the Patents Company's licensees you were obliged to return \$300,000 worth of film, do you? A. I don't quite understand that question, sir.

Mr. KINGSLEY: I will ask Mr. Hacker to read it to you.

The question was read to the witness as follows:

"Q. You do not wish it to be understood that as a condition precedent to receiving the services of the Patents Company's licensees you were obliged to return \$300,000 worth of film, do you?" 4

The Witness: I don't believe I made any such statement.

By Mr. KINGSLEY:

Q. Didn't you say at page 382 of the record in your direct testimony: "Q. You were then obliged at the beginning of this Patents Company arrangement, to return all



1 the film which you had theretofore collected? A. Yes, sir.  
Q. And did you get any allowance or any consideration for  
the return of that film? A. No, sir. Q. How much was  
the value of the film which you were obliged to return about  
that time? A. The purchase value was about three hun-  
dred thousand dollars." A. That is what I meant to say.

Q. Were not those questions asked you, and didn't you  
make those answers? A. Yes, sir.

Q. Now, as a matter of fact, you did not return any  
film at all, did you, except such film as you had already  
received compensation for in the shape of new film? A.  
2 We have not received any compensation in the shape of new  
film.

Q. As a matter of fact, you did not return any old film  
except such old film as represented new film that had al-  
ready been shipped you? A. I didn't understand the ques-  
tion.

Mr. KINGSLEY: Please read him the question.

The question was read the witness as follows: "Q.  
As a matter of fact, you did not return any old film  
except such old film as represented new film that had  
3 already been shipped you?"

The Witness: We paid for each reel that we got.

Mr. GROSVENOR: I think that question is con-  
fusing.

By Mr. KINGSLEY:

Q. You did ship back old film, did you not? A. We did  
ship back film, yes.

4 Q. And that was to make good new film which had been  
shipped to you about six or seven months before? A. It  
was returned—

Q. (interrupting): Just answer my question; that was to  
make good new film which had been shipped to you about  
six or seven months or before that, was it not? A. We were  
carrying out our arrangement to return film.

Q. Will you answer my question? A. I can't answer it  
as to any particular reel returned.

Q. Did you ship back old film for any other purpose



except to make good shipments of new film which had been made to you previously? A. We were returning reels— 1

Q. I didn't ask you that. I must insist that you answer the question. A. Well, I am trying to.

Q. You know you are not. A. I do not want to answer it the way you want me to answer it.

Q. I want you to answer this question: You shipped back film, didn't you? A. Yes, sir.

Q. That film was shipped back because you wished to return it in place of new film which had been shipped you six or seven months previously, is not that correct? A. Return it in place of such film that was supposed to be returned. 2

Q. That is, you chose the film that you shipped back? A. Yes, sir.

Q. Now, was there anything in your agreement with the Patents Company's licensees which prevented you from setting the 3,000 reels of film which you had aside and keeping them as long as you liked? A. Yes, sir.

Q. As I understand it, your agreement with the Patents Company's licensees provided that after the expiration of six months you were to ship back an amount of film corresponding to the amount that you had received seven months previously? A. Yes, sir. 3

Q. What was there to hinder you doing that if you wished? A. Not practical as a business proposition.

Q. Then you didn't do it? A. No, sir.

Q. And you substituted your old film for the new live film which had been shipped you? A. I didn't say which one I substituted, but I sent back those films that I could best get along without.

Q. In the course of your direct examination you submitted a list of prices of projecting machines, which was marked Petitioner's Exhibit 95, and which purported to represent the prices in 1907, 1908, 1909 and 1910, which you said were made up from your memory, which you claimed was good. Have you verified those figures since? A. No, sir. 4

Q. Isn't it true that new models of projecting machines have been made since the first of January, 1909, and that there have been several changes in such models? A. Yes, sir.

Q. Isn't it true that additional fireproof devices were

1 added to most of those machines before an increase in price, and before some of the changes were made? A. More fire-proof regulation brought about an increase of price.

Q. Now, these prices of projecting machines, Mr. Rosenbluh, which you have submitted here on your direct examination, and which are marked Petitioner's Exhibit No. 95 at page 384 of the printed record, do not have any explanation as to whether they are list, jobbers', or dealers' prices. Which do you say they are? A. The 1907 and 1908, I think are dealers' prices. Those in 1909 and 1910 are list prices.

2 Q. What would the discount be on machines listed for 1909 and 1910? A. It all depends upon how large a user of the machines you were. There were various discounts.

Q. What is the lowest discount? A. Twenty-five per cent.

Q. Now, I will take the first line there where it says "Edison Co., 1907, 1908, 1909 and 1910." A. I believe they were all list prices. You can let them all go far list prices. Because we bought them for less than that in 1907.

3 Q. Coming down to 1909, taking off 25 per cent., what would the price be where you have got it \$175? A. \$140.

Q. So it would not be any more than it was in 1908? A. \$150 was the list price there also.

Q. When did the General Film Company begin doing business in New York City? A. About July.

Q. About July of what year? A. 1910.

Q. At page 366 of your direct testimony you testified that there were two licenses cancelled about the time the General Film Company began business? A. Yes, sir.

4 Q. Miles Brothers and The Imperial Film Exchange? A. Yes.

Q. Is that right? A. Yes, sir.

Q. Now, I call your attention to Petitioner's Exhibit No. 25 at page 76, and I ask you to read it, and tell me what cancellations it announces?

Mr. GROSVENOR: This is an improper sort of a cross examination, to ask the witness to read an exhibit, and then state what the exhibit contains. Why not state what the exhibit contains?

The Witness: Do you want me to read it?

1

By Mr. KINGSLEY:

Q. Just read it to yourself, and then tell me. Have you read it? A. Yes.

Q. Is not that a bulletin from the Motion Picture Patents Company dated April 19th, 1910, to the effect that the licenses of Miles Brothers, Incorporated, at Baltimore, Maryland, and the Imperial Film Exchange at New York, Troy, New York, and Washington, D. C., had been cancelled for supplying licensed film to exhibitors whose royalties had not been forwarded to this company, for exchanging film, and for failure to take proper precautions to prevent licensed films from passing into the hands of unlicensed purchasers? A. Yes, sir.

2

Q. So that was not in July, 1910? A. I did not say that that is so.

Mr. GROSVENOR: I think that is improper cross examination, and for the purpose of giving a false impression. The date of that circular is one day after the General Film Company was organized, so that it shows that they did cancel two licenses the day after the General Film Company was organized, which is directly in line with what the witness testifies, being at page 366.

3

The Witness: It began doing business as the Waters Exchange.

By Mr. KINGSLEY:

Q. That was the time it began doing business, about July, 1910? A. They had another office—

4

Q. (interrupting): Was that about the time they began doing business, July, 1910? A. Of the renting of film in New York. They were in business prior to that time.

Q. I also call your attention to Petitioner's Exhibit No. 26 at page 77. Now, referring to Petitioner's Exhibit No. 26 at page 77, I call your attention to that exhibit, dated April 23rd, 1910, which is a notice of cancellation of the license of Miles Brothers, Inc., New York City, and Miles Brothers, Boston, Massachusetts, and states that the li-



1 censes of those exchanges have been cancelled for violating the terms of their license agreements relating to the use of licensed film and unlicensed projecting machines, and the maintaining of an unlicensed exchange. That is dated, is it not, April 23rd, 1910? A. Yes, sir.

Q. Has there been competition between you and the General Film Company for customers? By customers I mean, of course, exhibitors? A. Yes, sir.

Q. Have you ever obtained any exhibitors who formerly did business with the General Film Company? A. Yes, sir.

2 Q. And I suppose they have obtained some of your exhibitors? A. Yes, sir.

Q. What has been the proportion of these exchanges? Have you obtained as many exhibitors of the General Film Company as the General Film Company have obtained from you, or approximately the same number? A. I don't know who got the worst of it.

Q. You don't know? A. I don't know.

3 Q. But you are not finding any fault with the situation regarding that? That is, you do not know whether it is an even trade or not? A. We have been very active and tried to get others when they took some of ours away.

Q. You have been competing with them for business? A. Yes, sir. But we got it to a great extent from people who were not doing business with them, but were independents.

Q. I asked you about the exchanges between you and them. A. I said I did not know.

Q. Now, going back to this question of specials. You get specials now, don't you? A. Yes, sir.

4 Q. And you have been getting them for some months, haven't you? A. Yes.

Q. I think you said on your direct examination that the General Film Company obtained some specials which it handled exclusively? A. Yes, sir.

Q. Did you ever apply to any of the Patents Company licensees for an exclusive special? Of course, by "you" I always mean your company? A. I don't remember that we did.

Q. On page 466 of your direct testimony, I think you said Miss Erb, when she wanted some specials was informed



by you that you did not handle specials advertised as exclusively supplied by the General Film Company. That she made arrangements with the General Film Company and became one of their customers and got specials? A. Yes, sir. 1

Q. After getting these specials, she came back to you, did she not? A. For several weeks she was doing business there.

Q. Then she came back to you, didn't she? A. Yes.

Q. Is she still doing business with you? A. The house is. She does not own the house. She sold the place.

Q. And the house gets specials from you now? A. Yes, sir. 2

Q. These specials that she could not get at the time she left and went to the General Film Company were films that they handled exclusively, were they not? A. In this country. Some of those, some specials, were imported from the other side, and they were in the independents' hands, but we could not use those.

Q. Referring to the great majority of the motion pictures that you handled, is not the value of the film to you largely dependent upon its age? A. Will you repeat that question, please? 3

The stenographer repeats the question.

A. Some reels are and others are not.

Q. I am speaking of the great majority of them? A. The majority of them are; yes.

Q. Do you charge differently for the service of programs which you furnish to exhibitors? A. Yes; varied.

Q. And does this price vary for programs containing the same number of reels and the same number of changes a week? A. Yes, sir.

Q. And that is based upon the age of the film, is it not, largely? A. Not always. 4

Q. Largely? A. Very often it depends upon the distance that the customer is away from the exchange, and the conditions surrounding that particular exhibitor's business.

Q. Now, leaving that as it is, let us suppose that you are dealing with exhibitors who are about the same distance from the exchange, and who are equally accessible. Does the price vary for programs containing the same number of reels and the same number of exchanges, to those people?

1 A. Yes, sir. It depends upon the number of seats that the man has in his theatre, and the possibilities that he has of doing business.

Q. And also upon the quality of the goods that you send him, does it not? The age of the film? A. The age of the film has something to do with the makeup.

Q. It is a considerable factor, is it not? A. It naturally is. Everybody would like to get new goods if he can, for the same price, provided the subjects are equal.

2 Q. And whether the film is leased or sold to you conditionally, does not make any difference with regard to making up these programs in this way? A. It does to an extent.

Q. Is the system in use to-day in the distribution of films, materially different from what it was in 1909, so far as the making of programs for your customers is concerned? A. Yes, sir.

3 Q. In what way? A. There is a larger amount of reels to-day, in a program to-day, and it is necessary to balance them so as to give them a certain amount of drama and a certain amount of comedy, in order to make it blend properly, whereas in the early days, in 1909, there was a limited amount of reels and the public was not so educated as to the kind or program that was exhibited so long as they looked at pictures.

Q. What do you mean by a larger amount of reels? Larger amount of subjects? A. No; they used to exhibit two or three reels to a performance. Most exhibitors to-day use five reels to a performance, and a great many use more than five.

Q. In 1909, what was the number of films available per week? I mean at the beginning of the year? A. I believe there were fourteen. Of the licensed manufacturers.

4 Q. How many were available to you at that time? At the beginning of 1909?

Mr. GROSVENOR: By "available," you mean supplied by licensed manufacturers?

By Mr. KINGSLEY:

Q. Supplied by the licensed manufacturers? A. At the beginning of 1909, it was about 14.

Q. And how many are available to you now by the

week, of the licensed manufacturers? A. At the present time there are 47. 1

Q. So there has been an increase of about 330 per cent.? A. There are a larger number of theatres now using and calling for pictures, and the demand is larger in proportion.

Q. But at the same time, that gives you a larger variety to choose from, it gives you a larger variety of reels, does it not? A. Yes, sir.

Q. So that whether that is because of a larger number of theatres or not, the fact remains that there is a larger production, and that you have a larger variety than you did three years ago? A. Yes, sir. 2

Q. At the end of 1908, from whom were you securing films? A. The Edison licensees.

Q. Was the Biograph Company doing business with you at that time? A. No, sir.

Q. Were you getting any film from George Kleine at that time? A. No, sir.

Q. After the formation of the Patents Company and after you made your arrangement with the Patents Company licensees, were you able to get Biograph films? A. Yes, sir. 3

Q. Were you able to get film from George Kleine? A. A limited number of three reels.

Q. Now, there was no decrease of the number of the Edison licensees by reason of the new arrangement of the Patents Company? A. No, sir.

Q. How many manufacturers had you been securing film from before January, 1909? A. Just at what point?

Q. Well, say in December of 1908? A. About eight licensed manufacturers.

Q. Do you want to change that to read eight Edison licensees? A. Yes, sir. 4

Q. Which was it, seven or eight? A. Eight.

Q. And how many Patents Company licensees were you receiving film from in January, 1910? A. Ten.

Q. How many? A. Ten, I believe.

Q. At any rate, you were receiving from ten in February, 1909? A. Yes, sir.

Q. And you have continued to receive it from these licensees since, have you not? A. Yes, sir.



1 Q. When was the release date system for subjects put into effect? A. Under the Edison licensees.

Q. Back in 1908? A. Yes, sir.

Q. Then the present system of releases covered by the reels of the Motion Picture Patents Company is not a material change from the old system that you had under the Edison licensees? A. No, sir.

Q. With respect to releases? A. No, sir.

2 Q. Do you know whether the manufacturers of the independent film also controlled their business by release dates? A. It is advertised on release dates. I don't know how they control it, though.

Q. But they do so advertise? A. Yes, sir.

Q. And do they advertise their releases? A. Yes, sir.

Q. That is, they advertise them in the trade papers? A. Yes, sir.

Q. Do you advertise at all in these trade papers? A. No, sir.

Q. In 1908, after the adoption of the agreement with the Edison licensees, you only purchased film or rented film from the Edison licensees? A. Yes, sir.

3 Q. Did you say in your direct examination at page 363 that you could do anything you pleased as to your purchases in 1908, or words to that effect? I call your attention to folio 3 on page 363. Was this question asked you: "Q. How about 1908 and 1909? A. We could do anything we pleased. There was no restriction of any kind. Buy whatever we pleased and serve whoever we pleased." Do you remember that question and answer? A. Yes. Those dates should be 1907 and 1908.

Q. Well, now, could you do whatever you pleased about 1908? A. The early part of 1908, yes, sir.

4 Q. How long in 1908? A. Until the license agreements.

Q. When did they go into effect? A. In March, I believe.

Q. Could you in 1908 after March, do what you pleased with respect to buying and leasing? A. We could buy.

Q. Could you lease as you liked? A. We could lease to exhibitors.

Q. You could not under your Edison license agreement, lease to other rental exchanges, could you? A. I said we could lease to exhibitors.

Q. No, I am not asking you what you said. I know

what you said. I want to know what you could do. Now, after March, 1908, you could not, under your arrangement with the Edison licensees, lease your film to other rental exchanges? A. No, sir. 1

Q. And the exhibitors could not pass it back and forth among themselves under that agreement, could they? A. No, sir.

Q. Now, in that respect, your present license agreement with the Motion Picture Patents Company does not alter your business methods from what they were in 1908, after the agreement with the Edison licensees? A. No, sir.

Q. In 1908, you could not purchase from any source you wished after March, could you? A. Only from licensed manufacturers. 2

Mr. GROSVENOR: I object to that line of cross examination as incompetent. The mere fact that the Edison licensees may have been doing an unlawful act does not excuse the Patents Company for adopting it from them. That is, the ground of my objection is that the question of who originated the unlawful restriction, claimed to be unlawful by the Government, is immaterial. 3

By Mr. KINGSLEY:

Q. Now, Mr. Rosenbluh, are the Gaumont films in the market now? A. Yes, sir.

Q. What are those? Independent films? A. Unlicensed.

Q. Unlicensed? A. Yes, sir.

Q. Do you know of the Independent Motion Picture Company—"Imp" is the trade-mark? A. Yes, sir; I have seen those advertised.

Q. Do you know of the "101—Bison Pictures"? A. Yes, sir; I have seen them advertised. 4

Q. You have also seen the Powers Pictures advertised, have you? A. Yes, sir.

Q. The Eclair Films? A. Yes, sir.

Q. Have you seen the Rex Pictures advertised? A. Yes, sir.

Q. The Thanhauser Pictures? A. Yes, sir.

Q. And are there Victor Pictures in the market? A. I

1 don't know about those. I don't remember that name very much.

Q. Have you seen it advertised? A. If I have, it must be only once or twice. I don't remember that very much.

Q. Do you know of the Champion Pictures? A. Yes, sir.

Q. The Gem Pictures are advertised, too, aren't they? A. I have seen that name from time to time.

Q. And what is the Animated Weekly? A. Topical subjects.

2 Q. And the Nestor Pictures. Are those advertised? A. I don't remember that name recently. It used to be at one time. I don't know if they are now or not.

Q. Are the Crystal Pictures offered to the trade? A. Yes, sir; very recently.

Q. And the Universal Film Company's pictures, are they also in the market? A. Yes, sir.

Q. Who is the head of the Universal Film Company? Do you know? A. I don't know just which one. Swanson or Laemmle.

Q. Are they both in it? A. Both in it.

3 Q. What are the Mutual Film Company's pictures? Are they advertised, too? A. Yes, sir.

Q. And is there a concern known as the Mutual Film Supply Company, which also has motion pictures? A. Yes, sir.

Q. Among the manufacturers, do you know of Laemmle? A. I have heard of him.

Q. He is an independent, is he not? A. Yes, sir.

Q. And Gaumont. Is he an independent? A. Yes, sir.

Q. Is the Solax Company manufacturing independent film? A. I don't know about their manufacturing, but I have seen their name advertised.

4 Q. Are they selling it or dealing in it? A. I have seen their name advertised. I don't know much about their business.

Q. What are the Great Northern Special Features? A. I imagine they are moving pictures.

Q. Is it an advertised film? A. It is an advertised film.

Q. Is there a Broncho Motion Picture Company in New York? A. I have seen their name advertised.

Q. Are they doing business? A. Yes, sir.

Q. The Keystone Film Company? A. I have seen their name advertised.

Q. And where is the New York Motion Picture Company



located? A. I could not tell you, sir; other than I have known at one time they were in 1 Union Square. Where they are now I don't know. 1

Q. Are there films in America known as the Ambrosia Films? A. Yes, sir.

Q. And the Cines Film? A. That is a licensed film at this present time.

Q. That is a licensed film, is it? A. Yes, sir.

Q. Is there a Consolidated Film Company located in New York? A. I have not heard of them recently. I don't know.

Q. You have heard of them, though, haven't you? A. Some years ago they were in business. 2

Q. Do you know of the Reliance Films? A. Yes, sir; I have seen their name advertised.

Q. There is another kind called the Majestic Film? A. Yes, sir.

Q. How many rental exchanges were doing business in New York in 1908? A. Licensed or unlicensed?

Q. Handling licensed film. A. In 1908 there were twelve, I believe.

Q. How many people would you say are in the business of renting film at the present time in New York? 3

Mr. GROSVENOR: You mean companies, don't you?

By Mr. KINGSLEY:

Q. I mean establishments by that; I do not mean employees.

Mr. GROSVENOR: You don't mean to include each rental exchange of the General Film Company as a separate company?

Mr. KINGSLEY: I am asking him the question as it stands. 4

A. At the present time, there is more than there was a few months ago. They have just recently opened up the various branches, but I really could not figure them up very fast, but I should judge there are about five or six large rental companies, and should judge there is about twenty-five doing business as rental companies, but they are not recognized as rental agencies.

1 Q. What do you mean by the statement "within the past few months?" Do you mean within the last year? A. No; within the past few months, there have been quite some changes in the renting business.

Q. Were you a witness in the case of The Greater New York Film Rental Company, complainant, against The Biograph Company and the General Film Company, defendants, in the United States District Court recently? A. Yes, sir.

Q. And were you sworn on or about January 8th or 9th of this year? A. Yes, sir.

2 Q. Were you on that occasion asked this question, referring to rental exchanges in New York: "Q. How many do you say there are in the last few months? A. I should say thirty or forty." Do you remember that question and answer? A. Yes, sir.

Q. And do you remember this question was asked you: "What do you mean by the statement 'within the last few months?' A. Within the past six months or eight months. Within the past year." Do you remember that question and answer? A. Yes, sir.

3 Q. And you made that answer, did you not? A. Yes, sir. That has changed the last month, as I told you before.

Q. There have been some more in the last month, in addition? A. Not exactly more, but it has been changed.

Q. They are still increasing? A. Several of the General Film Company offices have gotten together. And there was a new company opened up under a new name, and various changes.

4 Q. But they are increasing all the time, are they not, so far as you know? A. I cannot say they are increasing. They are the same number, I should imagine. When two exchanges go into one, you could not call it an increase.

Q. You say they are not decreasing, though? A. I did not say they were decreasing.

Q. On page 364 of your direct testimony, referring to George Kleine importing a large number of films, you were asked this question: "Q. You could get a new reel a day from him? A. A day. Even if we wanted two a day. He had any number on hand." Now, by that you meant to say that it was possible to get a new reel from George Kleine at that time before the formation of the Patents Company? A. Yes, sir.

Q. And by that you meant you could get a new subject from George Kleine from time to time? A. Yes, sir. 1

Q. When you testified that you could get a new reel from Kleine every day before the Patents Company was formed, you knew, didn't you, that under the arrangement you had with the Edison Licensees, the Greater New York Film Rental Company, could not get a new reel from Kleine every day? A. I did not say that it was during the period of the Edison licensees.

Q. Didn't you? A. No, sir. That was the period of 1907.

Q. Do you remember this question: "Q. Before the formation of the Patents Company, was George Kleine importing a large number of films? A. Yes, sir. There was not any particular limitation to his importations. He was ready to supply almost any demands. I know that he could supply more than we could buy." Did you swear to that? A. Yes, sir. 2

Q. Were you buying from him at that time, just before the formation of the Patents Company? A. I should judge a year and a half before the formation of the Patents Company.

Q. So you do not want to be understood that in December, before the formation of the Patents Company, you were buying any reels from George Kleine? A. But in 1907 we did buy them. 3

Q. Is the Kinetograph Company in business in New York to-day? A. Yes, sir.

Q. Is it actively competing for the business of exhibitors? A. Yes, sir.

Q. Did Mr. Fox at one time tell you he had practically agreed to sell the company, his business? A. He told me he had negotiations with the Patents Company or with some one in the Patents Company. 4

Q. You know the Nicholas Power Projecting Machine? A. Yes, sir.

Q. Is that one of the prominent manufacturers? A. Yes, sir.

Q. Does it produce one of the best projecting machines in the market? A. Yes, sir.

Q. Is not the machine that is produced to-day, or in the last year by the Nicholas Power Company, an improvement over the machines they produced in 1907 and 1908? A.



1 Well, it is improved as far as the stability of the machine is. It is heavier.

Q. Heavier and more solid, isn't it? A. Yes, sir.

Q. It has more stability? A. Yes, sir.

Q. And has these fireproofing devices to which you referred? A. Yes, sir.

Q. Are you familiar with the number of theatres, and by that I mean motion picture theatres, in the City of New York? A. As to the number of theatres?

Q. Yes. A. You mean Greater New York?

Q. Yes. A. I should judge about eight hundred.

2 Q. There has been a steady increase, hasn't there, since January, 1909? A. Yes, sir.

Q. How many of these are independent theatres, would you say, or unlicensed places? A. I don't know, sir.

Q. Do you know them all? A. No, sir.

Q. Do you know where they are, most of them? A. No, sir, I do not.

Q. I understood you to say, you increased the number of your customers during the period which has elapsed since January, 1909, about 50 or 60? A. We have had them as high as eighty.

3 Q. Increase, you mean? A. Yes, sir.

Q. Were you, in the course of your examination in the case of the Greater New York Film Rental Company v. The Biograph Company and the General Film Company, January 27th, 1913, asked this question:

"Now, if you had not returned these 3,000 reels that you stated you returned to the manufacturers, you would have had to return 3,000 of the reels which you had obtained subsequent to the formation of the Patents Company, would you not?" Was that question asked you? A.

4 I don't know if it was just asked that way. If you read it and it is there—

Q. (interrupting): It was asked, was it not? A. Yes.

Q. And you replied: "I refuse to answer the question on the grounds that it is a matter of advice of counsel." Did you refuse to answer on the advice of counsel? A. Yes, sir.

Q. And did the Master then direct you to answer? A. Yes, sir.

Q. And did you answer, "I don't know what I would have had to do. I only know what I did do." A. Yes, sir.

Q. Have you ever been limited to any given number of exhibitors in any way by the Patents Company? A. I don't know just how you mean. 1

Q. I mean, you could serve any exhibitor that you could obtain as a customer, could you not? A. Providing he was licensed.

Q. Assuming he was licensed? A. And there was nothing against his character.

Q. And I think you have already said you have competed with the General Film Company for customers? A. Yes, sir.

Q. And you think the exchange between you and them has been about even? A. Well, just recently I have lost a little more, but I am in hopes of getting them back again after the rumors die away. 2

Q. Now, will you turn at page 362, you will notice there this question: "And thereafter, were you required to confine your rentals of films to your customers, and to give no films to the customers of any of the other exchanges? A. Yes, sir." You did not mean to imply by that that you could not go out and get new exhibitors so long as they were licensed, and add to the list of your customers? A. No, sir. 3

Cross examination by Mr. CALDWELL:

Q. Mr. Rosenbluh, you have stated that some time prior to December 25th, 1911, you consulted counsel and obtained an injunction from the Court stopping the cancellation of your license. That is correct, is it? A. Yes, sir.

Q. And that under that injunction, you were enabled to continue to supply your customers? A. Yes, sir.

Q. In what Court was that suit brought? A. In the State Court. 4

Q. Who were the defendants in that suit? A. The Motion Picture Patents Company and, I believe, the General Film Company.

Q. Any one else? A. The licensed manufacturers.

Q. Was your motion to continue that injunction granted? A. Well, I don't know just how those matters were taken care of.

Q. Don't you know, Mr. Rosenbluh, that Mr. Justice Bijur, early in 1912, denied that motion? A. I really could

1 not tell you just how those matters were taken care of. I know there were some denials, and I know it was taken to a higher Court.

Q. You knew that it went up to the Appellate Division of the Supreme Court? A. Yes, sir.

Q. And you know that the decision of the Appellate Division was against you, do you not? A. I do not, sir.

Q. You don't know that the Appellate Division held that the Patents Company had a lawful right to cancel your license? A. I don't know, sir, anything about that. I would rather not answer it.

2 Q. Then are you going to be content that your answer stand as it is on page 372— A. (interrupting): Those are matters of record.

Q. (continuing): That you continued your business by means of injunction from December 25th, 1911? A. Will you repeat that question?

Q. Are you content that your answer shall stand as it is found on page 372, that your business was continued pursuant to an injunction obtained in December, 1911, in the State Court? A. You mean that we were supplied with film due to that injunction?

3 Q. That you got an injunction which was continued? A. I don't know just what you mean, sir. You said, whether our business was continued? We kept on doing business. I don't know whether we continued doing business just because of that injunction.

Q. Do you mean to say that you do not know that your motion to continue that injunction was denied early in 1912 by Mr. Justice Bijur? A. I have heard of that; yes, sir. It was then taken to another Court, and there was another action started against another company.

4 Q. No; I am speaking now of your action in the State Court. Don't you know that the Appellate Division of the Supreme Court affirmed the order of Justice Bijur denying your motion? A. I do not, sir.

Q. Then don't you know that of the six Justices of the Supreme Court who passed upon your claim in that suit, they were all unanimous that you had no cause of action? A. I really did not know that, sir.

Q. You made several affidavits in that suit, didn't you? A. I believe I made one.



Q. You think you made only one? A. One in the State Court. 1

Q. I call your attention to the printed copy of the record on appeal in that case, purporting to give an affidavit commencing on page 99 thereof, by you, on December 15th, 1911. Do you recall that affidavit of December 15th? Page 99 it begins? A. Yes, sir.

Q. Will you turn to page 150? A. Yes, sir.

Q. That is another affidavit you made? A. Yes, sir.

Q. Will you turn again to page 167? A. Yes, sir.

Q. You made that affidavit too? A. Yes, sir.

Q. There were three affidavits, then, you made in that case? A. Yes, sir. 2

Q. In your direct examination on pages 367-371 of the record in this case, you testified as to a conversation you had with Mr. P. L. Waters early in the month of September, 1911, relative to the sale of your company to the General Film Company. You recall that? A. Yes, sir.

Q. You made substantially the same statement, did you not, in one of the affidavits, the first affidavit, to which I have called your attention there, in the State Court case? A. Yes, sir.

Q. You are aware, are you not, that Mr. Waters denied that he had any such conversation with you, in an affidavit which he submitted in opposition to your motion to continue the injunction there? A. I have seen his denial. 3

Q. You have seen his denial? A. Yes, sir.

Q. On pages 376-7 of this record, you testified to certain conversations which you had with Mr. Berst in reference to the cancellation of your license, and the reasons which Mr. Berst is alleged to have given you why your license was cancelled. You recall that testimony? A. Yes, sir.

Q. You made substantially the same statement in your affidavit in the case in the State Court, as to the conversation with Mr. Berst? A. Yes, sir. 4

Q. As in this record here? A. Yes, sir.

Q. And you are aware that Mr. Berst emphatically denied that you ever had such a conversation—

Mr. GROSVENOR (interrupting) : I object to that.

The Witness (interrupting) : Still mine is the truth, sir.

1       Mr. GROSVENOR: I object to that cross examination and I think it is an improper question. If they want to try to discredit the witness by Berst, they can bring Berst in the defense, but this is manifestly improper to ask what another man said in regard to his testimony.

      Mr. CALDWELL: Now, will you repeat the question?

      The question is repeated by the stenographer as follows: "And you are aware that Mr. Berst emphatically denied that you ever had such a conversation?"

By Mr. CALDWELL:

Q. That is correct, is it not? You are aware that Mr. Berst in an affidavit which he filed in that case, denied that you ever had such a conversation with him? A. Despite the fact that mine is the truth, he denied it.

Q. I am asking you the question—

3       Mr. GROSVENOR (interrupting): He has answered it.

By Mr. CALDWELL:

Q. Are you aware that Mr. Berst made a denial of it? A. I have seen his denial, despite the fact that what I said was the truth.

4       Q. On page 421 of this record, Mr. Rosenbluh, you testified that in several cases you had to pay advance royalties for the exhibitor in order to get his license reinstated after it had been cancelled by the Patents Company. Can you name any such instances? A. Yes, sir.

Q. Will you do so? A. Masano.

Q. Masano? A. Of South Brooklyn. I cannot give you just the street address now. I can furnish it if you want it, and one or two others.

Q. And others? I want you to name them now if you can? A. There are one or two others. I cannot think of the names just now.

Q. Then Masano was the only one? A. That I can think of at the present time.

Q. Do you recall in what way you paid those advance royalties? Whether by check or cash? A. Cash. 1

Q. Cash? At the office of the Patents Company? A. Mr. Masano, the exhibitor, took the money there and got his receipt for it.

Q. You gave Mr. Masano the cash and he paid it? A. Yes, sir.

Q. In whose name was the receipt given, do you know? A. To the exhibitor.

Q. You have testified now, Mr. Rosenbluh, and I refer to pages 422, 423, that exhibitors approached you and asked whether or not it was true that you were to lose your license, since they wanted to be protected. What exhibitors approached you and said that they had heard that your license was to be cancelled? A. Do you want names and addresses or do you want the exhibitors? 2

Q. I would like the names and the addresses of the exhibitors who approached you and said that they heard that your license was going to be cancelled? A. At which period was this?

Q. Your testimony to which I am referring now, is found at the bottom of pages 422-445. You may read it. A. Take the Windsor Amusement Company. 3

Q. Give their address? A. Grand Street near Clinton.

Q. What person connected with the Windsor Amusement Company? A. Mr. Forman.

Q. Mr. Forman? A. Yes, sir.

Q. Is he still connected with them? A. Yes, sir.

Q. Is that company one of your customers now? A. No, sir.

Q. Well? A. Do you want any others?

Q. I want all that you can think of. A. Well, if you get a list of all the exhibitors that were doing business with us in 1911, that the Patents Company can give you a list of, you can ask each one of them. 4

Q. I am not asking the question of the Patents Company— A. (interrupting): I will give you a list of every exhibitor that was doing business with us in 1907—

Q. (interrupting): I would like you to give us the best of your recollection as to what exhibitors came to you at that time and said that they heard that your license was going to be cancelled. You have testified very fully in the matter in your direct examination, but you have not given



1 any names. I want the names now. A. Every customer that we had on our books was approached. If you want me to give the complete list—

Mr. CALDWELL (interrupting): I move to strike out that answer as not responsive.

By Mr. CALDWELL:

Q. I did not ask you who was approached. But I asked you what exhibitors told you that they heard that the  
2 license was going to be cancelled? A. Take Weissman of 8th Avenue and 116th Street.

Q. Is he one of your customers at the present time? A. Yes, sir.

Q. What is the name of his theatre? A. I don't know the name of the theatre, but I will give you the proper address if you want it for any purpose.

Q. Can you name any others? A. Silverman, Far Rockaway.

Q. Silverman? A. Yes. In Far Rockaway.

Q. What is the name of his theatre? A. I believe it is  
3 The Auditorium. I am not sure.

Q. Is he still one of your customers? A. No, sir.

Q. He is not? A. No, sir.

Q. Do you know whether he still takes licensed service or not? A. I believe he does, of the General Film Company. And take A. Carlos.

Q. What is his place? A. Savoy Theatre.

Q. On 34th Street, New York? A. No, sir, he is up on Third Avenue and 162nd Street, I believe.

Q. Is he still one of your customers? A. Yes, sir.

Q. Is that all? A. Why, there is a number of them.  
4 It is hard for me to get their names just now. If I had a list here, I could get hold of every one of them that was doing business with us at that time.

Q. I am asking you about your recollection of it? A. My recollection of the names is very poor. It is not because there are not enough. Anson and Levy, Third Avenue near 14th Street.

Q. What is the name of his theatre? A. Star Theatre.

Q. Is he still one of your customers? A. No, sir. Take the Comet Theatre, Boston Road.

Q. What person connected with the Comet Theatre? A. Miss Erb. 1

Q. Is she still in business there? A. No, sir. Sold her place. Foster.

Q. What is his address? A. Fulton Street, Brooklyn.

Q. And what is his theatre? A. I don't know the name of the theatre. Rosenberg, Third Avenue and 84th Street. Cohen Brothers and Peyser.

Q. Give the name of his theatre, if he has one there. A. The Yorkville Theatre. Cohen Brothers and Peyser, on Prospect—

Q. (interrupting): Are they still customers of yours? A. No, sir. Prospect Avenue, near Westchester. 2

Q. Now, Mr. Rosenbluh, I call your attention—have you finished? Is that all you can think of? A. I can think of more if you want to take up the time. It is a little hard for me to think of the names.

Q. I will direct your attention to another matter now. On page 426, you say there, "Another instance brought to my particular attention was several weeks ago, an exhibitor had bought a place. In that theatre the previous owner had violated some of the rules of the Patents Company, and for that reason the license was cancelled." Can you tell us who that owner was? A. I don't know who it was at the time the license was cancelled. I will give you the name of the man who eventually got the place. 3

Q. Who was that? A. His name is the Longwood Theatre.

Q. The Longwood Theatre? A. The Longwood Theatre.

Q. Do you know the name of the proprietor? A. I cannot think of his name just now. It is Longwood Avenue, near Prospect.

Q. Well, now, can you give us the names of the exhibitors in the vicinity who were then customers of the General Film Company who went to this new owner and told him that unless he made arrangements with the General Film Company he would be a sorry man for having made his arrangements with the Greater New York Film Rental Company? A. Yes, sir. 4

Q. Can you give the names of the exhibitors in that vicinity? A. Yes, sir. Cohen Brothers and Peyser, Eckman, Colonial Theatre.

Q. Who of the Colonial Theatre? What person? Do you

1 know? A. I don't know the name. Price and something is the name. Price will answer for one of the names. Then there was the Nicoland Theatre. That is where the film was being supplied by the General Film Company.

Mr. CALDWELL: That is all.

Redirect examination by Mr. GROSVENOR:

2 Q. Mr. Rosenbluh, you have testified on cross examination that you have on hand about 3,000 reels? A. Yes, sir.

Q. Take your large customers. How many reels a week will they take, apiece, I mean? A. About 48 reels.

Q. That is to say, a customer who has a good-sized theatre will take from you 48 reels a week? A. Yes, sir.

Q. Now, how many customers do you have? About 150, I believe you testified. A. 150.

Q. And the smaller theatres, how many will they take a week? A. About 42. Some 35. Those who show only six days, they use about 30 or 36.

3 Q. Of those 3,000 reels that you have on hand, how many are necessary for supplying these 150 customers from day to day? That is to say, how many of them are in daily use or subject to call? A. About 800, I should judge, are in use, and there is a few of them in transit that are not being used, ready to be supplied to the theatres for the next day's use.

4 Q. Then that leaves about 2,000 that you are able to keep as permanent reels? A. Well, we use those as reserve to make changes. Of course, all people do not use the same age of film. Where an exhibitor is located in a certain section, he realizes that he has to take some of the reels that have been shown previously in that vicinity, and he likes to take those as far back as he possibly can, so that the public may have forgotten them to an extent, as having seen them possibly in the immediate vicinity, so that they take about three reels new goods, and two or three reels of the old goods, and we continue to use these older films to fill in that way.

Q. At the end of each month you return to the manufacturers as many reels of film as you have purchased during the seventh preceding month? A. Yes, sir.

Q. Then the number of the reels that you have on hand is not allowed to increase from month to month, is it?

A. It cannot increase.



Q. You said on cross examination that it was not practical to collect a library on these terms. What did you mean by that? A. If he printed a list, under any kind of a condition, and people would ask for it, the reels would not be available. 1

Q. That is, if you printed a catalogue or list to-day? A. Yes, sir.

Q. Do you have such a list to-day? A. We have a partial list from week to week.

Q. That is of the weekly releases? A. Of the weekly releases. That is all we have at the present time.

Q. Did I interrupt you? Have you said all you were going to say? A. I said if we divided those up in order to make a catalogue, it would be necessary to list those under some heading, and those lists could not be maintained. It would be necessary to send out at all times bulletins or cards off from these lists to show which ones was available and which were not available. Such a list would not be very presentable. 2

Q. You on cross examination named a number of the independent manufacturers of films. Are you allowed to handle in the rental exchange business, the films of any of those that you named on cross examination? A. No, sir. 3

Q. Or are any of 140 or 150 exhibitors who are taking from you your films, are they allowed to use these independent films of the manufacturers whom you named on cross examination to Mr. Kingsley? A. Not so long as they wish to remain a licensee.

Q. You answered on cross examination, I think, by Mr. Caldwell, that recently you lost some more customers, but as rumors died away, you hoped to get some of them back. What do you mean by that? What was the cause of this recent loss of a few customers? 4

Mr. KINGSLEY: I object to that.

Q. Please explain what you meant.

Mr. KINGSLEY: I object to any statement the witness may make based on rumor or the prospect that rumors may die away.

1      A. I have been approached two weeks ago by the exhibitors doing business with us with cards in their hands of the General Film Company. One of the cards had the name of Worthington on as a representative. Another had Williams on as representative. These men were very active, and I have heard from them in various parts of the city.

Q. Was this after the recent cancellation of your license?

A. Prior to that cancellation. In fact, they had the information going around that we were in trouble again. That this time it was positive, and authentic, that after a certain period, which was within two weeks, the Greater  
 2 New York Film Company would no longer receive any films, and that they had better make their arrangements immediately; in fact, very nice inducements were offered them to accept at once, and not to wait until such time as the films would no longer be supplied by the licensed manufacturers. In fact, I heard it from the Bronx, Brooklyn, Jersey, and all over. Every one of my customers pretty much was visited, and they all came and asked what truth there was to that statement. And a great many of them turned, and did not wait long enough to see what the result would be. In fact, one of the companies in Newark, Meyer  
 3 & Singer, left the General Film Company a few weeks ago and made arrangements with us. When they were about to leave the General Film Company, they were told that they would not fare well by making that change. That certain early runs would be placed with the exhibitors who were competing with them, and that they would stand no chance at all. These are the very first ones who were approached. In fact, he told me that the branch managers and some one who was pretty high up in the Patents Company—

4      Mr. KINGSLEY (interrupting): All this is objected to as hearsay, and street rumor and not binding on the defendants.

Mr. CALDWELL: And I, in addition, make a motion to strike it all out, as not being responsive to Mr. Grosvenor's question.

By Mr. GROSVENOR:

Q. You may state, Mr. Rosenbluh, whether it was after

this, shortly after this, that this cancellation notice was received by your company? A. Yes, sir. 1

Q. You may state whether or not the fact that you had received this other cancellation noted a couple of weeks ago was also made public in the trade? A. Yes, sir.

Q. Then what did your company do in order to get a revocation of the cancellation? A. Mr. Rogers, of Rogers & Rogers—

Mr. KINGSLEY (interrupting): I object to this as incompetent, immaterial and irrelevant and not going to the merits of the controversy in any way. 2

By Mr. GROSVENOR:

Q. Well, you took it up with the Government, is that right? A. Yes, sir.

Recross examination by Mr. KINGSLEY:

Q. What was the name of this firm in Newark? A. Meyer & Singer.

Q. When was it that Meyer & Singer were talking to you about continuing relations with you or about any rumors that may have been going about the trade? A. Ten days ago. And four or five days ago. 3

Q. Four or five days ago? A. Well, I should think six days ago, rather. A week ago to-day.

Q. I thought you said it was before the notification? A. Yes, before the notification.

Q. When did you get the notification? A. I think it was the 13th.

Q. How many days was this prior to the 13th? A. One or two days. 4

Q. Now, in the case of the Greater New York Film Rental Company v. The Biograph and the General Film Company, you testified January 8th and 9th, 1913, did you not, or about that time? A. Yes, sir.

Q. Do you recall this question and answer: "Q. Did a greater number of your customers go to the General Film Company than General Film Company customers came to you, to the complainant, or was the number about equal?"



1 A. I should judge about a fair exchange." Did you so answer? A. Yes, sir.

Q. Such a question was asked you and you so answered? A. Yes, sir.

Q. Now, about that library of yours. Have you got any films on hand that you had when you entered into the arrangements with the Patents Company or the Patents Company licensees? A. Yes, sir.

Q. You have 100 or 200 on hand now? A. Yes, sir.

Q. A nice little library of those films? A. Yes, sir.

2 Q. And you have over 3,000 films in the place? A. About 3,000. I don't know if it was more or less.

Q. You have out to-day about 800 films among your customers? A. Yes, sir.

Q. You have about 200 a day in transit that might be said to be in the air? A. Yes, sir.

Q. And you have about 2,000 back in the main office? A. Yes, sir.

Mr. GROSVENOR: Of which you will have to send out 800 to-morrow?

3 The Witness: Well, we may have to send 200 or 300 out, of those. I don't know just how many.

Mr. KINGSLEY: But you are getting a few in to-morrow?

The Witness: Yes, sir. That goes in and out.

4 Mr. KINGSLEY: That is like pouring it into the barrel with one pail and taking it out with another, isn't it?

The Witness: Yes, sir.

At this point, an adjournment was taken until Friday, February 28th, 1913, at 10:30 A. M. at the Hotel McAlpin.

IN THE  
DISTRICT COURT OF THE UNITED STATES,  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

1

<p style="text-align: center;">UNITED STATES OF AMERICA, Petitioner,</p> <p style="text-align: center;"><i>v.</i></p> <p style="text-align: center;">MOTION PICTURE PATENTS Co., and others, Defendants.</p>	}	<p style="text-align: center;">No. 889.</p> <p style="text-align: center;">Sept. Sess., 1912.</p>
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New York City, February 28th, 1913.

The hearing was resumed pursuant to adjournment at Hotel McAlpin, New York City, at 10:30 o'clock on this February 28th, 1913.

Present, on behalf of the Petitioner, Hon. EDWIN P. GROSVENOR, Special Assistant to the Attorney General.

3

JOSEPH R. DARLING, Esq., Special Agent.

Present also, Messrs. GEORGE R. WILLIS, FRED H. WILLIAMS and CHARLES F. KINGSLEY, appearing for Motion Picture Patents Company, Biograph Company, Jeremiah J. Kennedy, Harry N. Marvin, and Armat Moving Picture Company;

Mr. J. H. CALDWELL, appearing for William Pelzer, General Film Company, Thomas A. Edison, Inc., Kalem Company, Inc., Melies Manufacturing Company, Pathe Freres, Frank L. Dyer, Samuel Long, J. A. Berst and Gaston Melies;

4

Mr. HENRY MELVILLE, Attorney for George Kleine, Essanay Film Manufacturing Company, Selig Polyscope Company, George K. Spoor and W. N. Selig;

Mr. JAMES J. ALLEN, appearing for Vitagraph Company of America, and Albert E. Smith;

- 1 Mr. DWIGHT MACDONALD, appearing for Mr. Rowland;  
Messrs. EDWARD P. THOMPSON and JOHN HILL MORGAN, specially appearing for the Kinemacolor Company of America.

Thereupon, A. H. SAWYER, the next witness subpoenaed by the Petitioner, of lawful age, duly sworn, deposed:

Direct examination by Mr. GROSVENOR:

- 2 Q. Mr. Sawyer, what is your business? A. Well, I am connected with the Kinemacolor Company of America, as manager of the film supply end of the business.

Q. What is the business of The Kinemacolor Company?  
A. The business of manufacturing natural color motion pictures, or colored motion pictures, but not painted, the manufacturing, importing, renting and the exhibiting of these specially colored pictures.

Q. They do the manufacturing, importing, distributing, etc., is that what you mean, etc.? A. Yes, sir.

- 3 Q. That is, your company not only manufactures, but it distributes, and at times exhibits, films? A. Yes, sir.

Q. How long has the Kinemacolor Company been engaged in business? A. In this country about three years.

Q. Is this manufacturing and distributing company a New York corporation? A. It is, yes.

Q. Is that the exclusive licensee of another company under the same name, being a Delaware corporation? A. It is.

- 4 Q. You may state what patents, if any, the Delaware corporation owns. I do not mean for you to specify and enumerate them all, but generally speaking what are they, whose patents? A. The Kinemacolor Company of America, Delaware corporation, owns the Urban-Smith patents for a process known as "kinemacolor."

Q. What Smith is that? A. C. Albert Smith, an Englishman. This invention was first produced in England.

Q. This Albert Smith that you have named is not the same Albert Smith who is connected with the Vitagraph Company of America? A. He is not.

Q. This other man, Urban, is he a resident of England?  
A. Mr. Urban is an American, who has lived in England for



a number of years, and has been in the motion picture business in England during the time he has been there. 1

Q. As I understand you, this Kinemacolor Company has taken out American rights under these English patents, that is, has taken out patents over here? A. They have bought the patents for America, that is for the United States.

Q. Have you been connected with the Kinemacolor Company since it has been in business in this country? A. I went with them—my first connection was within four months of the time the first company (which is neither one of these companies), bought the rights for America. In other words, the first company formed in Allentown, Pennsylvania, which bought the rights. 2

Q. And that company went out of business? A. Yes, sir.

Q. And then was succeeded by the two companies you have named? A. Yes, sir.

Q. Have you been connected with these two companies you have named since those two companies have been in business? A. Since they were formed, yes, sir.

Q. And are you, generally speaking, familiar with the manufacturing, distributing and exhibiting ends of your business? A. I am. 3

Q. Now, Mr. Sawyer, please state briefly the distinctions that exist between the monochrome, or black and white pictures, and the pictures which are made by your company? A. Well, the difference is very decided between the kinemacolor, and the monochrome or black and white films, but possibly there is nearly a parallel in the hand colored film—

Q. Parallel between what? A. Kinemacolor and hand colored films, a parallel but a decided difference, and I may say there is really no comparison of black and white, or monochrome, with the kinemacolor, but there has been some confusion in the minds of the public, and possibly exhibitors, regarding the hand colored films, and kinemacolor. The kinemacolor process is the result of photography, actual photography in colors—there is no painting or touching up on the film itself. In fact, the film appears to the naked eye exactly the same as the monochrome film. Hand colored films are films that have been painted, that is, the monochrome film has been painted by hand. 4

Q. Well, let us get back to the taking of the picture. A. Yes, sir.

1 Q. In order to produce a colored picture, as distinct from a black and white picture, do you have to take more pictures per second? A. We do, we take nearly double the number.

Q. That is, you take thirty-two pictures a second instead of sixteen? A. Approximately, yes.

Q. And that requires practically a double amount of film to produce the same subject? A. Yes, sir.

Q. And in taking the picture, you use the same sort of film, that is, the transparent translucent tape-like film as used in the black and white picture? A. We do.

2 Q. Now, is there anything that you place in the camera before the transparent film in order to obtain your pictures, which are either red or green, as I understand it? Please describe the process. A. We use a revolving color filter, which is used to filter the light rays and colored rays. This filter is composed of two segments, one of green, and one of red. When the picture is taken, or when the film is exposed, one picture is taken through the red, and then as the next exposure is made the filter is revolved so that the green has come before the next piece of film, and we get the next through the green film, and

3 so on, alternately, red and green, throughout the length of the film being exposed. One of these segments, the red segment, for instance, or rather red, and its complementary colors, pass through on the film—

Q. That is, the red rays? A. Yes, sir, and the green, allowing the green rays, and the complementary rays of green, to pass through on the green segment.

Q. Then, when you come to reproduce those pictures on the screen, you may state whether or not you use similarly red and green sectors. A. A similar contrivance is

4 used on the projecting machine, the pictures being set on the same color as they were when they were taken. In other words, in starting the film the first picture taken through red, for instance, is set opposite the red sector on the filter, and then it works automatically throughout the film.

Q. Are there any differences in the sensitiveness of the film when used in these kinemacolor pictures, or for kinemacolor pictures, and when used for monochrome pictures? A. We use a similar negative, similar to that used for monochrome pictures, but it is first sensitized by a secret sen-

sitizing process to make the film susceptible to all color views, especially reds, as most film is not sensitive to red. This is only on the negative, however.

Q. State whether or not that is one of the secrets of the business? A. That is a secret process.

Q. And in developing and perfecting colored moving pictures is this process of increasing the sensitiveness of the film one of the most important factors, or has it been one of the most important factors? A. Yes, it is, and has been.

Q. You may state what sort of a projecting machine you use in your kinemacolor pictures. A. We use a specially made machine that is a much heavier type, and stronger built also, than any other model on the market. This is made heavier and stronger particularly to accommodate the speed of the film, or the wear on the machine, which comes from increasing the speed of passing the film through the machine, as the film is projected at practically the same speed that it is taken, that is, at the rate of thirty-two per second, instead of sixteen, as in black and white.

Q. This light has to pass through this red and green filter, for which reason the light has to be stronger? A. Yes, sir.

Q. Has this Kinemacolor Company been distributing its colored pictures throughout the United States? A. We have not distributed very much because we have met with a good many obstacles.

Q. To what do you refer? A. Well, our pictures, in the first place, are put out by us as an exclusive proposition, and naturally the price of rental for kinemacolor pictures is much in excess of the same number of films in black and white, and we, of course, are anxious to put our films in the highest type of houses, and as is generally known, the General Film Company is principally supplying the best type of houses.

Q. You mean licensed houses? A. Yes, houses that are licensed.

Q. Now, are you able to-day to exhibit these colored pictures in the licensed houses? A. No.

Q. Have you found a demand existing on the part of the public to see these colored pictures? A. Yes, sir.

Q. You may state whether or not any of these licensed theatres have indicated a willingness to accept your pic-



1   tures provided they could do so under the terms of the  
license agreements.

Mr. KINGSLEY: Objected to as incompetent, immaterial, irrelevant, and calling for a conclusion on the part of the witness relative to the mental processes of exhibitors.

Mr. GROSVENOR: Please answer the question.

2   The Witness: We have had a great many applications  
from exhibitors, asking us if they could show kinemacolor  
pictures in their houses, or houses which were running licensed films. We have offered to supply them the service, and in a great many cases they have written us and advised us that they could not put in kinemacolor, as it was not licensed, and that they had been forbidden to show the pictures in connection with their licensed film.

Q. You may state whether or not that provision in the license agreement has had any effect upon the expansion of the business of the Kinemacolor Company. A. Absolutely yes, it has.

3   Q. Now, you may state whether or not these colored pictures are the latest development in the moving picture art, speaking from your knowledge of the business. A. I consider them so, and the general public seems to, every place they are shown.

Mr. KINGSLEY: I move to strike out what the witness says about the conclusions of the general public.

4   Q. Please name some of the topics, or subjects, principal subjects, and current events, of which colored pictures have been taken? A. Well, the first real introduction of kinemacolor to the American public was made with the "Coronation of King George and Queen Mary of England." That was produced as a special entertainment, playing in the leading theatres, or a number of them, in the country. The next special event was the "Durbar in India," which toured the country, playing at a great many of the leading theatres. At the present time we are presenting actual scenes of the "Balkan War," and "The Making of the

Panama Canal," which is about to start on a tour of the leading theatres of the country. 1

Q. You may state whether or not those are some of the pictures which you have been prevented from exhibiting in the licensed theatres? A. These are.

Q. Does your company also produce pictures in colors, of dramas and stories, such as are produced by the moving picture companies generally? A. We have produced almost every conceivable kind of a subject that camera men, and artists could produce, including comedy, dramas, topical events, scenic views, and scientific and educational subjects. In fact, I may add we have a very large library of all those classes of subjects. 2

Q. Does this description which you have given of the licensed theatres, and your being unable to show your pictures in them, apply generally throughout the United States? A. Yes.

Q. And you may state whether or not throughout the United States the larger theatres as a general rule are the licensed theatres? A. I would say that the better class of houses, in which are included the leading vaudeville houses, are licensed theatres; in other words, that remark may be qualified, because the independent service is in as fine houses as the licensed service, but there are more of the higher type houses using licensed service, owing to the fact that the big vaudeville interests have been running the licensed film, and their interests are so large—they have been notified, particularly the Keith interests, that if they used independent film, speaking of kinemacolor and independent film, in any one house controlled by any part of that organization, that the licenses would be revoked in all of the Keith houses. Now, I think my remarks about the best houses should be qualified in that way. If I may say one more thing— 3 4

Q. Yes. A. And when I spoke of leading theatres, having played these big productions, I mean the dramatic houses, combination houses, and not houses that are usually devoted to moving pictures and vaudeville or moving pictures alone.

The witness was excused until 10:30 A. M., March 1, 1913.

1 Thereupon WILLIAM H. SWANSON resumed the stand for further cross examination.

Cross examination continued:

By Mr. KINGSLEY:

Q. Mr. Swanson, I understand you have been sworn before in this case? A. Yes, sir.

Q. And have given testimony here? A. Yes, sir.

2 Q. Mr. Swanson, how much do you depreciate film after you get it into your place on your books? A. It is according to what period of time you are referring to.

Q. How much do you depreciate it right away on your books? A. At the present time?

Q. Yes. A. Well, I have two methods of depreciation.

Q. What are they? A. One, I depreciate eighty-five per cent. upon purchase, and the other I depreciate it twenty-five per cent. four times, twenty-five per cent. each month—

Q. How long a period? A. I mean by that I depreciate it 25 per cent. the first month.

Q. The first month? A. Yes, sir.

3 Q. And twenty-five per cent. more the second month? A. Yes, sir.

Q. And twenty-five per cent. the third? A. Yes, sir, and 25 per cent. the fourth month.

Q. And twenty-five per cent. the fourth month? A. Yes, sir.

Q. So that at the end of four months you have marked it off your books so far as the value goes? A. Yes, sir.

Q. So far then, as the depreciation goes on the books? A. Yes, sir, you understand that does not mean twenty-five per cent.—

4 Q. (interrupting): I am just asking you about the method of depreciating it on your books. A. Yes.

Q. Now, in making a statement of your assets, do you make it at the cost, or at the depreciated price, as to which you have just testified? A. I show it at the depreciated value, of course. That depreciation proposition, that is very recent, you know.

Q. You have been doing that right along recently, have you not? A. Oh, no.



Q. Recently? A. Up to three years ago old films had a great deal of value where they have not any now. 1

Q. But you do depreciate it eighty-five per cent.? A. Yes, sir, at the present time.

Q. How long have you been in the manufacturing, exhibiting, and renting business with relation to motion pictures? A. About 15 years.

Q. You have been in the business continually, have you not? A. No—yes, yes, yes—as an exhibitor.

Q. Do you remember the time when the Patents Company was formed in January of 1909? A. I do.

Q. How many places were you operating at that time? 2  
A. Exchanges do you refer to?

Q. Yes. A. Four.

Q. Are you sure that you were operating more than three? A. Am I sure of which?

Q. Are you sure you had more than three rental exchanges at that time? A. Well, I had the ownership of three, and an interest in the fourth one.

Q. What was the fourth one? A. New Orleans.

Q. Is that the rental exchange which is known as the "Swanson-Dixie"? A. Yes, sir. 3

Q. And you had one share of stock in that at that time, didn't you? A. I don't remember the number of shares I had. I had all the shares, practically.

Q. You mean at that time? A. Yes, sir.

Q. Is that the institution regarding which you testified about a month ago in this proceeding that the manager had locked the door sometime in the Fall of 1908, and ran away with the money? A. Yes, sir.

Q. And that you went down there later in that same Autumn and year, and after spending six weeks there, during which period your expenses were running on, you finally gave it to some business associate? A. I said that, yes. 4

Q. Well, that was true, was it not? A. Yes, it was.

Q. So that you did not own it in January of 1909? A. I was Vice-President of it.

Q. But you didn't own it? A. No, I didn't own it outright.

Q. You held nominally one share of stock, I think you have testified, have you not? A. I held all the stock, I simply gave the assets away.

1 Q. After you gave the assets away you didn't ascribe very much value to the stock at that time, did you, except for the purposes of your testimony? A. Well, I felt there was a value to it, inasmuch as the man I gave the exchange to said if he ever made any money he would pay me for this stock; I never had any keen desire for the stock.

2 Q. And your Kansas City place had been closed sometime back in 1908, during the period of Mr. Dyer's having an official position with the Edison people? A. No, it was not closed. When you asked how many exchanges I had, I had forgotten the Kansas City one. I had five at the time you mentioned, in January, 1909—it was one of them, although it was not prepared to buy film; it was what was known as a "junk shop."

Q. It was what was known as a "junk shop?" A. Yes, sir.

Q. Had not been buying film from the Edison licensees? A. No, sir.

Q. How long had you been cut off at that time? A. Long enough to—say two or three months.

3 Q. You have testified further in your direct examination that Mr. Dyer had put you out of business, or something to that effect? A. Yes, sir, Mr. Dyer put me out of business in Kansas City. You are referring to that?

Q. Yes. On the occasion of the formation of the Patents Company you came on here some days before the meeting of the Film Service Association? A. Yes, sir.

Q. You had knowledge of the terms of the license, or the form of the license, that was to be used, for some two or three days prior to the meeting itself, didn't you? A. Yes, sir, I did.

4 Q. Did you go over this license with any of the manufacturers, or any members of the Film Association, before the meeting? A. I don't recall.

Q. Did you have a talk with Mr. Lubin prior to the meeting of the Film Service Association in reference to the license? A. Well, in reference to the general situation—well, I had a talk with him, I remember.

Q. Did Mr. Lubin say to you he had been fighting for years, and had gone broke twice before, fighting in court? A. That took place in the meeting.

Q. He did say it? A. Yes, sir.

Q. You heard him? A. Yes, sir.

Q. Did Mr. MacDonald say that it looked as though the fighting would be eliminated? A. Yes, sir; he said so at the meeting. 1

Q. And a number of them that were going in gave you their reasons for going in, didn't they? A. Yes, sir; some of them. You are referring to the manufacturers?

Q. Yes, I refer to the manufacturers especially. A. Yes, sir.

Q. Did they give among other reasons, one to the effect that they were hopeful of stopping further ruinous litigation among the owners of the patents? A. Yes, sir, they did. 2

Q. As I understand your testimony given on direct examination, you say twenty-eight members of the Film Service Association agreed not to go into the Patents Company? A. They did.

Q. And they didn't keep their agreement? A. The most of them didn't.

Q. You were a party to that agreement? A. I was.

Q. Do you recall the names of any members who did keep the agreement, and didn't go into the Patents Company? A. Yes, I recall a few of them. 3

Q. Who were they? A. Swanson-Dixie Film Company, Eugene Cline, of Chicago, Chicago Film Exchange, Globe Film Exchange, Laemmle Film Service. Some of those kept the agreement through being forced—

Q. What was that? A. Some of those I have mentioned kept the agreement by being cancelled.

Q. How soon did you sign the agreement after the adjournment of the Film Service Association? A. I don't remember.

Q. A few days afterwards? A. It necessarily must have been a few days, because there were only a few days allowed in which to sign it. 4

Q. You testified your net profits at one time were \$100,000. What year was it that your net profits were \$100,000?

Mr. GROSVENOR: That subject was exhaustively covered in cross examination at the last hearing.

The Witness: As to this question of profits, in the years 1907 and 1908, the latter half of 1907, and the first part of 1908, my profits were over \$600,000.



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Q. Your profits? A. Yes, over \$600,000.

Q. Were over \$600,000? A. Yes.

Q. What do you mean by that, your gross profits? A. Yes, sir, gross profits.

Q. What were your net profits during the latter part of 1907, and the first part of 1908? A. That I am unable to say, what the net profits were.

Q. Well, were they ten per cent. of the gross? A. Yes, sir. They were seventy-five per cent. of the gross, I should imagine.

2

Q. Now, when you say your gross profits were \$600,000, of what details did those profits consist? A. Stock on hand, money in bank, and investments in theatres.

Q. Did you make a statement to Bradstreet's Commercial Agency in Chicago, on or about May 21, 1908, in which you reported assets amounting to \$215,000? A. I don't know, I might have done so.

3

Q. Didn't you make a statement on or about May 21, 1908, when you were doing business at 164 and 166 East Lake Street, Chicago, in which you reported assets, stock and equipment \$200,000, accounts receivable, \$5,000, cash, \$10,000, total, \$215,000? A. Well, I have no way of remembering whether I made that or not, but I presume I did if they have got it.

Q. And didn't you make such a statement to Bradstreet's? A. If I don't admit it I should deny it—well, I don't remember it.

Q. You said you presumed you must have done it, just now. A. I presume if they reported that I must have done it.

4

Q. And this was the time you say you made \$600,000 profits in those two years? A. Yes, sir, up to about that time.

Q. At the time you made this statement? A. Yes, sir.

Q. When did those profits begin to shrink, what time, in 1908? A. Well, when I began to live up to the regulations and rules of the Edison license agreement.

Q. Then you began to lose money? A. Yes, I lost it very rapidly then.

Q. Did you go in the film exchange business in Denver after you left Chicago? A. I did.

Q. When did you open the place in Denver? A. I don't recall the date.

Q. About what year did you go to Denver? A. It was about two years ago. 1

Q. Have you had a place there ever since? A. Yes, sir.

Q. Have you a branch at Salt Lake City? A. Yes, sir.

Q. Have you other branches in the West? A. At El Paso.

Q. Any others? A. No, sir.

Q. And those branches are supplying circuits of their own, are they not? A. Yes, sir.

Q. Now this business has been conducted in Denver, or developed in Denver in the past two years, as I understand you? A. Yes, sir.

Q. Did you make a statement over your own signature to Bradstreet's representative in Denver, on August 2nd, 1911, setting forth your assets and liabilities? A. It seems to me I did, I think I did. I don't know as to the date but I did make a statement. 2

Mr. GROSVENOR: I object to that as immaterial, and not proper cross examination, for the reason that it was a subject that was not gone into on direct, anything as to what the witness was earning in the year 1911, which was long after his license was cancelled. 3

By Mr. KINGSLEY:

Q. In that statement did you set out these items: Merchandise at cost, \$120,000; accounts and notes receivable, \$8,000; cash on hand and in bank, \$26,000; interest in W. H. Swanson & Company, Chicago, \$100,000; interest in Swanson-Crawford Film Company, St. Louis, \$150,000; interest in Rex Motion Picture Mfg. Co., New York, stated at \$80,000; interest in Howard, Thurston & Co., New York City, \$28,000; interest New York Museum Company stated at \$17,500, total, \$529,500. Liabilities: Balance of purchase price of Co-Operative Independent Film Company, \$13,000. Signed, "William H. Swanson." Did you make such a statement? A. I did. I made a statement of that character, but I do not recall the date of it. 4

Q. Did you set out your interest in W. H. Swanson & Company, in Chicago, as \$100,000? A. Yes, I presume I did.

Q. And did you set out your interest in the Crawford-Swanson Company, St. Louis, at \$150,000? A. I don't re-

1 member that; I don't believe I made any \$150,000 figure for that.

Q. You don't quite recall that? A. No, sir.

Q. But if you signed such a statement you made it, of course? A. Certainly.

Q. I think you described the competition which existed between you and others in the latter part of 1908 as ruinous— A. (interrupting): I didn't describe it as ruinous.

2 Q. Didn't you say there was a time that you proposed to Mr. Dyer that the film rental exchanges should turn over half of their interests to the Edison business, in order to get the protection of the Edison patents? A. I didn't put it in that way.

Q. Perhaps I can refresh your recollection. Wasn't there a time that you came East as a committee of one— A. (interrupting): Yes, I recall.

3 Q. (continuing): As a committee of one representing the rental exchanges of Chicago, and you saw Mr. Dyer and said, "Can't something be done to stop this ruinous competition?" A. I came from Chicago to New York. I did not see Mr. Dyer. No.

Q. You called him up on the 'phone and said, "Can't something be done to stop this ruinous competition?" A. Not to stop the ruinous competition. To keep his promise of shutting out the independents.

Q. And didn't you say, "If you will stop this ruinous competition"— A. (interrupting): I beg your pardon.

Q. Don't interrupt me. You will have plenty of time when I get through. A. I don't want you to put those words in my mouth that I did not use; "ruinous competition."

4 Q. You don't think you used them? A. I don't think I did.

Q. The Omaha Exchange, I think you said, was burned while the Film Association was meeting in January, 1909? A. Burned that day. Yes.

Q. At what price was the Edison Exhibition Model of projecting machine sold in 1908, before the formation of the Patents Company? A. I don't recall. That sort of thing slipped my mind. I think it was \$95.

Q. Wasn't it \$155? A. \$155? No. That was an improved model that was sold at that price.



Q. When you say \$95, do you mean that was the price it was sold to you as a dealer? A. No, that was the list price. The \$155 outfit, if I recall right, was equipped to meet some new regulations just going into vogue, of fire magazines, and take-up devices, and so forth. 1

Q. At any rate, the requirements of the new regulations which had been adopted by the Fire Underwriters here and there had been met? A. They made an endeavor to meet them, yes, sir.

Q. And that of course raised the price of the machine somewhat? A. The price of the machine, as a complete machine, was \$95, but with these additional equipments, would raise it to \$155. 2

Q. In making a model of that sort which meets the requirements of fire underwriters, they try to meet the requirements of the most exacting of them, do they not, and therefore, do business in all cities? A. I presume that is their intention.

Q. Do you know the price of the Edison Exhibition Model to-day? A. I do not think they have an exhibition model on the market.

Q. That is, you don't know the price at present? A. I think the only machine they have is the Model B. 3

Q. What is the price of that? A. It is \$225 list.

Q. What is the price to dealers? A. Twenty and fifteen off.

Q. Does that mean thirty-five? A. No, sir.

Q. Oh, I see what you mean. Twenty first and fifteen after? A. Yes, sir.

Q. I want to go back to the latter part of 1907 and the first part of 1908. How long a period did it take you to make this \$600,000? A. About fourteen months.

Q. That is, you made a little less than \$50,000 a month? A. Yes, sir. 4

Q. What were you doing at that time? What was your business? A. Renting film and operating theatres.

Q. How many theatres were you operating? A. I cannot recall exactly. There was quite a number of them.

Q. How many exhibitors were you serving at that time? A. I don't remember the branches, the Chicago office—

Q. (interrupting): Was that at the time that your book-keeping was being changed? Was that the time you had

1 trouble with the bookkeepers? A. I had had trouble with the bookkeepers all the time.

Q. Has that changed since the last hearing? A. Still have it with the bookkeepers. They are a wonderful lot of fellows. The number of customers in the Chicago office, if I remember correctly, was at the time, 480 or 490. There was so many that when I told Mr. Waters about it, he said he did not think it was possible. But I remember there were quite a number.

2 Q. Did you say in your direct examination that you recalled thirty-three suits brought against Kleine by the Edison interests? A. Not against Kleine. No.

Mr. GROSVENOR: Against Kleine and his exhibitors?

The Witness: Not against Kleine and his exhibitors. No, sir. Kleine was not interested in those suits at all.

3 Q. Were you asked this question on your direct examination, at page 315: "Q. Do you recall any suits being brought against Kleine or any of Kleine's customers in the year 1908? A. I recall about thirty. Between 30 and 33 suits, that were brought in Chicago against exhibitors that were using his goods, by representatives of the Edison interests." A. That is my answer, yes.

Q. Then you do recall thirty-three suits brought against Kleine and Kleine's customers? A. Not against Kleine. Just Kleine's customers.

Q. Kleine and Kleine's customers, you said? A. I beg your pardon. I did not interpret it that way.

Q. At any rate, you recall thirty-three suits against his exhibitors? A. Somewhere in that neighborhood, yes.

4 Q. You were one of the prime movers, were you not, in forming the Film Service Association? A. Yes, sir.

Q. And that could only handle Edison goods? By that I mean the goods of the Edison licensees? A. No, we had no reference to what goods you would use, but to license the exchange.

Q. What film could the Film Service Association members use? Give me a general term for it? A. Well, what we used to term "Association film."

Q. "Association film?" A. Yes.

Q. And that was the film manufactured by the Edison licensees, was it not? A. Yes. 1

Q. And that is all they could handle if they observed the terms of their agreement? A. If they observed it. There were conditions put in the agreement shutting out the use of others. I do not recall if that was precisely so.

Q. You prepared the by-laws for that Association, didn't you? A. I did.

Q. And you provided in those by-laws that the Film Service Association would dismiss a member if he purchased from Kleine or the Biograph Company? A. I do not recall any such by-law as that. 2

Q. Well, aside from its being a by-law, was that a rule of the Association, or the practice? A. It was the practice, yes, but not any written rule that I have any knowledge of.

Q. It was set out in the minutes of the Association that that should be done, wasn't it? A. Well, that I am unable to say.

Q. Didn't you swear so on your direct? A. Sir?

Q. Didn't you swear to that on your direct examination? A. Oh, no; I do not recall it. 3

Q. Didn't you answer at page 313, "Well, if any member of the Film Service Association had bought film from Kleine or the American Mutoscope & Biograph Company at that period, they would have been dismissed from membership of the Film Service Association. Then the Film Service Association was an ally of the Edison licensees; could not handle any goods but theirs. Q. That was so provided in the agreement? A. Yes, not in the agreement, but in the minutes of the Association." A. Well, I had it more particularly in my mind at that time. Perhaps it was right.

Q. That is a fair inference from the answer, isn't it? A. Yes. I have no idea of denying— 4

Q. (interrupting): No; but your idea is to keep close to the phraseology? A. Yes, at times my recollections of those things are not disturbed by outside things.

Q. Did Kleine withdraw from the Edison licensees because they would not permit him to release as many brands as he wished? A. That was the understanding. Or, the street understanding.

Q. Now, I ask you to look at page 316 of your direct



1 examination. Have you found it? A. Yes, I have it. I see what you refer to there, I guess.

Q. Now, didn't you say on your direct examination, and isn't it so set out at that place to which I have referred you: "Q. State what it was as far as you recall? A. I asked him if he did not think it was possible or feasible to eliminate that ruinous competition, and he said that he did not think that it was." Did you make that statement on your direct examination? A. I did, but I did not mean it in that sense.

2 Q. Well, I just asked you if you made it? A. Certainly, yes; certainly.

Q. So you did say something in your direct examination about a conversation with Mr. Dyer in the latter part of 1908, in which you asked him if it was not feasible to eliminate the ruinous competition then prevailing? A. I made that statement, yes.

3 Q. And at that time you told him that if the patents could be used to protect the rental exchanges, that they would be willing to turn over to him half of their business—to the owners of the patents? A. Not to protect the exchanges. I made the statement to him that if he could close up entirely the independent exchanges through the medium of his patents, that we would be willing to give him half of the business.

Q. You said you came on as a committee of one representing the rental dealers of Chicago, did you not? A. Yes.

Q. Did you represent them all at that time? A. All except the independents.

4 Q. Did you say at that time to Mr. Dyer that you in Chicago had faith in the estimated value of their patents, meaning the Edison patents? A. When you say, "you," do you refer to the body of exchanges?

Q. No. (Reading): "We, in Chicago, have faith in the estimated value of their patents"; meaning the Edison patents? A. I don't recall. I may have said so.

Q. Look at page 320. Was this question asked you on direct examination: "Q. You came here to New York you mean? A. Yes. And for the purpose of seeing Mr. Dyer; we, in Chicago, having faith in their estimated authority under their patents." Was that question asked you and did you make that answer? A. I did.

Q. In your discussion with Mr. Dyer respecting the commercial and legal aspects of the patent situation with reference to the Edison patents, did you understand him to lay great stress on the value of the patents? A. No, I did not. 1

Q. Well, did you understand him to lay great stress upon the fact that the patents would give the owners many exclusive rights? A. No. No and yes.

Q. Well, no and yes— A. (interrupting): Well, it was a theory—

Q. (interrupting): That is all right: I am satisfied.

Q. In your direct examination, you were asked a question by the representative of the Government relative to some statements that Mr. Dyer made in regard to nationalities, especially relating to Jews. Do you recall that answer? A. I recall him making that statement, yes. 2

Q. Do you recall there was such a statement made by you and that you answered? Now, were you recently a witness in the case of the Greater New York Film Rental Company against the Biograph Company and General Film Company? A. Yes.

Q. And you gave testimony, did you not— A. (interrupting): I did. 3

Q. (continuing): In regard to various phases of the controversy between those litigants? A. I did.

Q. Do you remember that this conversation between you and Mr. Dyer or Mr. Dyer and others, in which the question of race and nationality was raised, was brought up at this hearing? A. It was.

Q. And was this question asked you: "Q. What was said about that? What was the conversation in detail?" And did you make this answer: "A. It is a very hard matter for me to recall details exactly, as they were, I thought, probably saying that in a laughing spirit." Did you make that answer? A. Is that the answer in question to the matter regarding the race? 4

Q. Yes. I will go back if you wish. Shall I read back? A. If you will. I do not recall making such an answer as that in connection with that particular question.

Q. Did you make this statement—

Mr. GROSVENOR (interrupting): You have not shown yet that he is referring to the same con-

1       ference, have you—that you are referring to the same conference?

By Mr. KINGSLEY:

Q. That is the only time that that question was raised when Mr. Dyer was present, wasn't it? A. Regarding the matter of nationality and race?

Q. Yes. A. That was talked about by other people than Mr. Dyer. That was not the only time Mr. Dyer made that remark. No; he made it as many as fifty times to me.

2       Q. When was it that this was brought up in a laughing spirit? A. Well, I don't know what you are referring to there.

Mr. GROSVENOR: Just let the witness read his testimony.

By Mr. KINGSLEY:

Q. At the time that you gave testimony in the case of the Greater New York Film Rental Company against the Biograph Company and the General Film Company, were you asked this question: "Wasn't there something said at the meeting by the manufacturers, Mr. Swanson, about eliminating some of the companies or exchanges that were then in existence, because there was not room enough for them? A. At that meeting." And by that answer, you probably ask a question. Now here is the next question: "Q. At the meeting, or prior to that meeting? A. At a number of prior meetings, the statement was made by Mr. Dyer and Mr. Rock, that I can particularly recall the names of, that they were going to in some manner organize so that they could eliminate Jews from the business. That they would not have them in." Did you make that answer? A. I did.

Q. Were you asked those questions, and did you make those answers? A. I did.

Q. Now, there was some objection to this line of testimony, was there not, at that time? A. I don't remember.

Q. Were you asked this question: "Q. In connection with that last answer, I would like to ask you, Mr. Swanson, you are not a Hebrew, are you? A. No, sir." Was that question asked you, and did you make that answer? A. I did.



Q. Then, was this question asked you: "What was said about that? What was the conversation in detail? A. It is a very hard matter for me to recall details exactly, as they were, I thought, probably saying that in a laughing spirit." Was that question asked you, and did you make that answer? A. I don't recall that answer. I don't understand it at all.

Mr. GROSVENOR: I suggest that the counsel let the witness read the testimony instead of reading parts from it.

By Mr. KINGSLEY:

Q. This \$600,000 that you made in the latter part of 1907 and the first part of 1908, a period covering fourteen months, was that entirely from the show business and from the rental business? A. Yes.

Q. What part of it came from the show business which you operated as a showman, or theatre owner, or the proprietor of theatrical companies, and what part came from your rental exchange business? A. Well, I cannot say, but the greater part of it came from the rental exchange business. Much the greater part.

Q. Since the last hearing, have you learned whether or not you were sued by Thomas A. Edison, Incorporated, at any time? A. I have not given it a thought.

Q. What safety deposit vaults did you keep your money in at that time when you were making so much of it? A. I don't remember. In the Hibernian.

Q. In the Hibernian? Where is the Hibernian? A. Clark and Adams Street.

Q. Any other? A. I had several. I don't remember that.

Q. You don't recall those? A. No.

Q. Although you were making so much money that you were depositing it in safe deposit boxes, you don't recall even the institutions where you rented the boxes? A. I did not deposit very much in safety deposit vaults.

Q. You don't recall the institutions where you rented these boxes? A. No.

Q. There was more than one, wasn't there? A. Well, I had more than one safety deposit box, yes. I don't remem-

1    ber the period of time nor where they were. I changed them frequently.

Q. One of them may have been at the Hibernian? A. Yes, it may have been.

Q. The others you cannot say anything about? A. No. No, I cannot.

Q. Did you furnish a list of your exhibitors to the Patents Company in accordance with your license agreement after you went back to Chicago?

2                    Mr. GROSVENOR: I object to this as a repetition of the cross examination of the last hearing, the witness having been examined in detail about certain lists which were brought forth by the counsel for the Patents Company at that time.

By Mr. KINGSLEY:

Q. Did you? A. I have already answered that question once before.

Q. What did you say? A. I don't remember.

3    Q. Did you give the list to Mr. Church at the time he came there? A. I don't recall giving Mr. Church the list. Mr. Church got a list in the office.

Q. Did he get a list in the office? A. I think he did.

Q. Didn't you swear in your direct examination that you had refused him a list? A. I did, when he first came to Chicago.

Q. What exchanges were renting films in competition with you in Chicago when you started in business, and during a period when you were in partnership with Mr. Maher? A. Do you want the names of the exchanges?

4    Q. I would rather have the number of them. When you started in business and during a period when you were in partnership with Mr. Maher, was the Laemmle Film Exchange, American Film Exchange, Theatre Film Service Company, The Royal Film Exchange, The Globe, The Standard, and The United States Exchanges among your competitors? A. They were.

Q. Were they still in competition with you at the time of the formation of the Patents Company? A. Yes.

Q. Were not the same sources of film supply open to you after your cancellation by the Patents Company as to the

Anti-Trust Film Exchange, Laemmle Film Exchange, The Standard Film Exchange, and other independents? A. Positively not. There was not one single inch of film in the United States to be obtained for over a month after I was cancelled. 1

Q. And when did you first begin to get— A. (interrupting) : On the 27th of March.

Q. What was the name of that company? A. The International Projecting and Producing Company. The 27th of March was the first release they made. I was cancelled on the 15th of February.

Q. Did you use in your own theatre in 1907 and 1908, one of the old style machines that you say was sold in 1907 at \$95? A. No. 2

Q. What? A. They did not permit the machines without magazines in Chicago— Oh, I don't know in the outside theatres. I have no idea what machines are used.

Q. Let us go back to Chicago. Did you use it in Chicago? A. In 1907? 4

Q. Yes. A. I don't recall what machines they allowed in Chicago at that time. They changed their law very frequently.

Q. Later on, you did not, anyway? A. No. After the fire laws went into effect. 3

Q. And that change was regardless of any change in price that the manufacturers may have made? The change was caused by the ordinances? A. The city ordinances, yes.

Q. Do you know the Laemmle Film Exchange, or know anything about it? A. Yes, I know about them.

Q. Have they offices in various cities? A. They had.

Q. And did they have in March, 1909? A. They did.

Q. Were they licensed by the Patents Company? A. They were.

Q. And did they voluntarily surrender their license later on? A. I think not. I think it was cancelled. 4

Q. Do you know, or not, about that? A. No, I don't know positively.

Q. Now, in your direct examination, at page 322, and I would like you to look at that if you will, you swore that "The Power's machine sold about, I believe, for \$95, and it was later sold at \$150, and without any additional improvements to any of the machines to amount to anything to justify the rate. Then, there were other changes



1 made to the machines, and the prices were raised to \$225." This Power's machine, you say, was sold for about \$95. Do you recall that machine? A. I do.

Q. Do you recall that you purchased such a Power's machine from the Kleine Optical Company on or about February 7th, 1907? Do you know anything about that? A. No.

Q. You purchased so many you don't recall them? A. I purchased machines in lots of 100 at a time. I don't recall any one in particular.

2 Q. What is the "Complete Cameragraph." Is that a Power machine? A. Yes. And "complete" though, had quite a qualifying distinction in the machine. The word "complete."

Q. Do you know that on February 7th, 1907, you purchased a complete cameragraph with upper and lower magazines, for \$175? A. I have no way of knowing that.

Q. You do not deny it? A. Why certainly I deny it if I don't know it.

3 Q. When you don't know it, do you deny? A. Well, I presume you want either yes or no for an answer. If you ask me about a single transaction, in a business that was going on, a big live business, certainly.

Q. I show you what purports to be a duplicate invoice of two machines shipped to you on February 7th, 1907, or sold to you on that date, by the Kleine Optical Company, in which appears the entry, "One complete Cameragraph with upper and lower magazine, \$175; one complete machine less magazine but with take-ups, \$155; total, \$330—

4 Mr. GROSVENOR: This is improper anyway, for the reason that you are asking now of the price from Kleine Optical Company to the witness, and in his testimony on direct to which you are referring, he gave the prices to the Powers Company.

Mr. KINGSLEY: This is the Power's machine.

Mr. GROSVENOR: The Power's machine was sold by a jobber.

Mr. KINGSLEY: He bought it from a jobber.

Mr. GROSVENOR: In his direct, he does not refer to the prices by jobbers to him. He is talking about the prices of the Powers machine.

Mr. KINGSLEY: If that is your explanation, I will

let it stay on the record like that. It is good enough  
for me. 1

Q. When did the amount of unlicensed film become sufficient to meet the requirements of the independent theatres and managers? A. It has not altogether reached it yet.

Q. Didn't you swear in the suit of the Greater New York Film Rental Company against the Biograph Company and the General Film Company that it had reached that proportion last May? A. I think I qualified it by stating that it met the generalities of the demand but not all of it. The demand in New York is six or seven reels a day. We cannot meet that. 2

Q. In May of last year how many exchanges were there in the United States that were dealing in unlicensed film? A. About 30.

Q. They were not handling Biograph film, were they? A. No.

Q. All of it was purely unlicensed film, the thirty that you refer to? A. All of it unlicensed, yes.

Q. Now, Mr. Swanson, in the case of the Greater New York Film Rental Company against the Biograph Company and the General Film Company, were you asked to make a general statement relative to the business of the rental exchanges and exhibitors, and the general progress of the motion picture business in the United States? A. I was. 3

Q. And did you on that occasion make this statement: "A. The licensed film exchange would receive requests, either by telegraph, telephone, letter or verbally from an exhibitor for service of the licensed film. The licensed film exchange manager thereupon would furnish that film, providing he was satisfied of the character of the man he was doing business with, temporarily until such time as he could report the taking on of that client to the New York office of the Motion Picture Patents Company. The Patents Company had a rule permitting the licensed exchanges to furnish any applicant that seemed satisfactory to the local exchange manager, with service for a certain number of days, until such time as this exhibitor would be enabled to send in a request for a licensed theatre to the Patents Company. The Patents Company then reserved the right to either furnish a license to the exhibitor or reject his application for it. In the event that the theatre did 4

1 not receive a license from the Motion Picture Patents Company, the exchange was notified to that effect, and they immediately discontinued serving that theatre upon getting the knowledge that the theatre had not been given its license. In the event it was given a license, they continued to furnish the film in the customary manner, which usually throughout the United States consists of a daily change, speaking purely and simply of moving pictures, of three to four or five reels a day. Perhaps two years ago it was not so many.

2 "The price that we would ask, of course, in larger cities would be very likely uniform; but in smaller towns, the judgment of the exchange manager applied, taking into consideration the size of the man's house and the size of the city and his possibilities for earnings, and the price was then set on the novelty of the film or the age of it. It was then termed in the course of time, in the trade, "runs," meaning by that, that inasmuch as all film throughout the United States was released on designated release days, and released simultaneously all over the United States, the word "runs" applied as to the first run, second run, 3 third run, fourth run, or fifth run, or runs of a different figure. The runs in each case meant days; and a film one day old was the first run; a film two days old was the second run, etc.

"Programs have been made up usually on a basis of one early or very new run, and one a little bit older, and the other one considerably older than the other two.

4 "The prices never were uniform, and they varied; in many cases a man would complain that if he was paying a certain amount, that was too great an amount, and there would be a reduction made, even though he got the same service. The prices that were asked varied in every portion of the United States. The New York City prices by no means would be as high as prices of admission in San Francisco, owing to the fact that prices of admission in the Western country were ten cents in most cases, whereas in New York it is only five cents, and the patronage was greater. The moving pictures are more of a serious entertaining proposition in the West than in the East, owing to the fact that they do not have the great amount of amusement resources to take advantage of, and therefore the prices out there were larger; the houses were larger;



the capacities are larger than in the East. They accommodate more people, and therefore the theatre managers could afford to pay more rent. 1

"Of course, in many instances, the rents in the West are very cheap, the same as they are in the East. The Patents Company reserved the right at all times to judge as to whether the exhibitor was properly conducting himself as to the usage of the film. They would not permit him to surreptitiously loan the films to somebody else while in his possession, for the use of some particular theatre. It would not permit the circuits, meaning a chain of theatres, to use the film. They had a rule that every time a film went out, it had to be actually returned from the particular theatre to which it had been sent. And if a theatre manager violated any of the conditions of his license, the Patents Company then instructed the licensed manager to cancel that theatre's service immediately. They could cancel it on other grounds, such as the non-payment of film, and carelessly handling the film, etc." 2

Q. You made that statement, did you not? A. Yes, sir.

Q. And were you asked this question on that occasion: "Q. Can you state what were the prices based on runs generally; I mean the maximum and minimum generally through the United States?" And did you make this answer: "A. The prices varied so greatly, that it is difficult to say. New York City then and even now did not pay as much for the same relative runs as an exhibitor in Chicago would pay. As an illustration, I have knowledge of but very few of the several hundreds of theatres in New York that pay an amount in excess of \$100 a week for their service, whereas in Chicago, out of perhaps half the number of theatres there are in New York City, there are a great number of theatres that pay \$100 or a great deal more than \$100 a week for their service; and the same would apply everywhere." Did you make that statement? 3

A. I did. 4

Q. Now, was this question asked you: "Q. The maximum, generally speaking, I mean the maximum anywhere, would not exceed \$200 a week, would it? A. Oh, my, yes; yes, indeed. Take the Orpheum Theatre, in Chicago; they have paid for licensed service more than \$200 a week for several years." Is that correct? A. I would not say "for

1 several years." I would not have knowledge for several years.

Q. With that exception, is that correct? A. Yes.

Q. (reading): "Q. In that case they get several first runs a day? A. Yes." A. Yes.

Q. Now, were you asked this question: "Q. So that the price has been generally paid on the amount of first runs, and also, as you said previously, on the capacity of the theatre and the patronage of the theatre?" Were you asked that question? A. I believe so.

2 Q. Did you make this answer: "A. I would say that, taking it in a broad sense, that is, taking my explanation in a broad sense, that a film exchange manager's only guide is to get as much as possible for his service, and to use his own best judgment in getting that. It is very rarely that you keep raising the exhibitor; the tendency is always downward, and very rarely upward, except where they are threatened by competition of some one who will come in and bid against them for the same identical service; I mean, bid against the theatre that already has the service from that particular exchange. For instance, if  
3 another theatre opened up, he can go to the exchange man and say 'I will give you \$50 a week more for that same service.'" Did you make that answer? A. I did. But they did not give me an opportunity to explain that I had in mind at all times the reason for that price condition was the competition of the independents.

Q. Were you asked this question: "Q. That is, the exchange, generally speaking, would only have to supply—"

4 Mr. GROSVENOR: Let me interrupt you a minute. Are you introducing these questions and answers, or the mere statement that he made the answers to these questions?

Mr. KINGSLEY: I am putting them on the record as his statement of the general conditions now prevailing.

By Mr. KINGSLEY:

Q. Were you asked this question: "Q. That is, the exchange, generally speaking, would only have to supply a certain amount of first run service? A. That is all regu-

lated by the number of reels that he purchases or leases in the case of licensed film. I neglected to state in my previous answer that, of course, a licensed theatre would not be permitted to run any film but licensed film in that theatre." You made that answer, did you not? A. Yes, sir. 1

Q. Were you asked this question, and did you make the answer which I shall read you: "Has the price of service of film to theatres, that is, licensed film to theatres, increased or decreased since the formation of the Patents Company, if you can answer the question? A. I can answer it in a general way, but it is relative; prior to the formation of the Patents Company, my experiences were entirely in the West. At about the time of the formation of the Edison agreement, the generality of theatres used one reel in their program and changed that twice a week, and after that they changed three times a week; and my personal experiences are, I never rented anybody film for less than \$40 a week for either two reels a week or even three reels a week." Did you make that answer? A. I did. 2

Q. And was this question asked you, and did you make the answer which I shall read: "Q. Did that take into account the change daily? A. The change daily came into effect just shortly before the formation of the Patents Company, and the competition became so great and the demand for film so great that we brought in the daily change, and it brought into effect the putting on of two reels a day, but we did not increase the price any. The exchanges' investment was much greater, but the increase in price was not a great deal. It eventually settled down to a three reel a day program throughout the country, and the prices in that time, I would imagine, are on the increase." Did you make that answer, Mr. Swanson? A. I think so. 3 4

Q. And was this question asked you, and did you make the answer I shall read you: "Q. You can get film service from licensed exchanges now for as low as \$25 or \$30 a week, if you want it? A. As low as \$15 a week." Did you make that answer? A. I did.

Q. And was this question asked you, and did you make this answer: "Q. Then the substance of your remark is that the leasing prices of the film have practically been



1 dependent on what the exchange could get for it and the demand that they had for film? A. That exists even today; yes, sir." Did you make that answer? A. I did.

Q. Were you asked this question and did you make this answer: "Q. I mean, that the prices vary throughout the United States? A. Oh, yes; there is no similarity; there are a great many conditions that must be taken into consideration when you figure the price for the license of film by the theatres. In one section of the country, they will agree to pay the express charges one way, and not furnish lithographs free. In other sections they will furnish lithographs free, and pay express charges both ways. In other sections, they will not pay any express charges whatever. The exchanges will not pay any express charges whatever, and will charge for the posters. It varies. Every city varies. Hardly any two are alike as to their conditions. Posters and express and such matters all enter into the price." Did you make that answer? A. I did.

3 Mr. GROSVENOR: Well, what is he talking about there? General conditions in the business, or the independents, or the General Film Company, or all of them?

Mr. KINGSLEY: General conditions.

The Witness: The questions and answers to all of that matter there was answered to and was prompted by matters wholly within the scope of the Greater New York Film Exchange and the Motion Picture Patents Company. It has no—it had no bearing or leaning toward the question of competition between licensed film exchanges and independent film exchanges.

4 By Mr. KINGSLEY:

Q. Those questions were asked you, and you made those answers? A. Yes. It did not refer to the conditions which brought those questions about.

Mr. GROSVENOR: It is not proper to bring in isolated matters without connection in the record. When you use a question with the word "they" we do not know what the word "they" refers to, if you take a question at random that way.

By Mr. KINGSLEY:

1

Q. Now, I am going to ask you one or two more questions out of this same record. Referring to the depreciation of the film, were you one on the occasion to which I have just referred, when you were giving testimony in another suit, asked this question, and did you make this answer—

Mr. GROSVENOR (interrupting) : Depreciation of the film when?

Mr. KINGSLEY : After the rental exchange gets possession of it.

2

By Mr. KINGSLEY:

Q. (reading) : "Q. Taking film from the time of the formation of the Patents Company down to, say, May last year, and based on your experience as having operated exchanges, what depreciation, if any, is there in film based on the age or the release day of the film, that is, is the older film as valuable for rental purposes as a newer film, or not?" And did you make this answer: "A. No; and I would explain so far as my own method of doing business is concerned, at about the period of time you speak of the very day that I bought a reel of new film, or leased it—and my leasing experiences were not very extensive—but prior to that time, the day that I received a new film, I marked it off; I depreciated it on my books 85 per cent. and held it at that price since that time. In film that I buy now, for the purpose of endeavoring to keep books somewhere within the bounds of reason, we depreciate it 25 per cent. four times, and let it remain at that for a period of seven months, and then mark it off as of no value—or eight months"—

3

Q. Was that question asked you and did you make that answer? A. The question was one of a continuity of answers.

4

Mr. KINGSLEY: No—

Mr. GROSVENOR: Let the witness answer fully.

Mr. KINGSLEY: I want the witness to answer—

Mr. GROSVENOR (interrupting) : I instruct the witness to answer fully.

1       Mr. KINGSLEY: You are not here to instruct the witness.

      Mr. GROSVENOR: This is not proper cross examination, to read sentences from a previous record.

      Mr. KINGSLEY: These are long extracts taken from the record, of statements made by this gentleman as to the conditions of the business. I am entitled to a categorical answer.

      Mr. GROSVENOR: I instruct the witness to answer fully.

2       Mr. KINGSLEY: I object to your instructing the witness. You have no more right to instruct him, as I understand it, than I have.

By Mr. KINGSLEY:

      Q. Now, Mr. Swanson, did you at the time to which we have referred, make the answers which I have read to the questions which I have read, yes or no? A. I refuse to answer the question without you giving the entire continuity of questions.

3       Mr. GROSVENOR: I have no objection to your putting in the whole testimony if you want it, but the way of taking a question here and there without even making clear what the subject refers to, is very improper, and without even letting counsel for the Government, or the witness, see this record.

      Mr. KINGSLEY: Counsel for the Government has not asked to see the record until this moment, and I do not understand you are asking for it now.

      Mr. MELVILLE: Is it entered on the record that the witness refuses to answer under the direction of Mr. Grosvenor?

4       Mr. KINGSLEY: How is that entered there?

      The stenographer repeats the colloquy between the counsel following the answer of the witness, "The question was one of a continuity of answers."

      Mr. MELVILLE: I understood the witness refused to answer under the instructions from the attorney-general.

      Mr. GROSVENOR: The record certainly does not show that I instructed him to refuse to answer.



Mr. MELVILLE: I understand you instructed him to refuse to answer "yes" or "no" to that? 1

Mr. KINGSLEY: What was the last statement made by the witness?

The stenographer repeats the last statement of the witness.

By Mr. KINGSLEY:

Q. Do you mean by that, you wish me to go on with the questions and answers that follow this? A. I mean by that that I think it is jeopardizing a possibility of damages that I have made against the Patents Company and your associates, and you are putting me in a false light now. I meant by that, further, that the depreciation of the film at the time you are speaking of and the causes leading up to any reasons for it are altogether out of line. 2

Q. Let us drop that for a moment, and see what you want me to do here. You say you want the continuity of the questions. Do you mean by that the questions that follow? A. Precede and follow, because later on I show their meanings.

Q. I have been reading here for eleven pages. 3

Mr. GROSVENOR: It might refresh the recollection of the witness to examine the testimony, as is the general custom.

Mr. KINGSLEY: It is only a few days ago.

The Witness: I remember the testimony well, but I further remember that there are reasons stated why these depreciations are not necessary now. That they did not exist prior to the formation of the Edison Company and the licensed companies. 4

By Mr. KINGSLEY:

Q. I am only asking you as to the depreciation after the formation of the Patents Company. That is what this question is asked for. The question was plain enough (reading): "Taking film from the time of the formation of that Patents Company down to, say, May of last year, and based on your experience as having operated exchanges, what

1 depreciation if any is there in film based on the age or the release day of the film; that is, is the older film as valuable for rental purposes as a newer film, or not?" Now, was that question asked you? A. The question was.

Q. Now, did you make the answer which I read to you? A. I made the answer, and at the time the answer was made, it was quite clear in the mind of the man asking the question and the man that was answering it that that referred only to independent film, because there is no depreciation nor value of film to a licensed exchange.

2 Q. No depreciation of value? A. No. It is merely under a lease.

Mr. GROSVENOR: The witness was also talking of the time after the formation of the Patents Company.

By Mr. KINGSLEY:

Q. Now, you have cleared this up to the extent that you wish? A. Not altogether; no.

3 Q. What you mean is this, that after the formation of the Patents Company, independent film was depreciated in the way that you have described in this other case? A. Yes, sir.

Q. That was your method? A. Yes.

Q. That is what I am asking you about. You handle a lot of film, don't you? A. Yes.

Q. That method is good enough for you, isn't it? A. It is not entirely satisfactory. I never found anybody that found a satisfactory method. But it is the best I could find.

4 Q. The best you could work out? A. Yes.

Redirect examination by Mr. GROSVENOR:

Q. Mr. Swanson, Mr. Kingsley, referring to some conversation you testified to that you had with Dyer, asked you this question: "Did you understand him," that is, Dyer, "to lay great stress upon the fact that the patents would give the owners many exclusive rights? A. No, and yes." Have you anything to say in addition to that answer, which you gave to the question? The answer "No, and yes?" A. Yes, sir. The impression that Mr. Dyer created,

and the avowed declaration of Mr. Dyer was to the effect that while they did not lay any more than a five per cent. valuation on the advantages to be gained from the patents themselves, that they, through commercial organization, would add 95 to the 5, making it 100 per cent. of advantages—in other words, it was a favorite expression of his, 5 per cent. legal and 95 per cent. commercial. And through the medium of the patents, they could bring about a commercial organization that would be beneficial to those interested. 1

Q. There was an answer you were giving about the conditions in Chicago. What was that? A. Well, the particularly obnoxious condition in Chicago was brought about by some independent film exchanges that had names that were attractive to a great many exhibitors, such as the "Cut Rate Exchange." 2

Mr. KINGSLEY: What was that in connection with?

Mr. GROSVENOR: I had in mind getting that answer that you did not want to get on the record.

Mr. KINGSLEY: Was that in connection with the ordinance in Chicago? 3

The Witness: No, sir; it was in connection with my visit here to see Mr. Dyer for the purpose of giving up fifty per cent. of the business of the exchanges.

Recross examination by Mr. KINGSLEY:

Q. That was at the time there was the competition to which you have referred? A. It was the names and methods they were using.

Q. And you came on from Chicago about that? A. Yes. 4

Q. You did not come on account of the names so much as the methods? A. Both combined.

Q. You did not come an inch on account of the names? A. To clear your mind on that matter, I knocked the head off the fellow that owned the "Cut Rate Exchange." Mr. Van Ronkel, one of your favorite proteges at the present time, is the gentleman I am referring to.

At this point, the hearing is adjourned until 2:30 P. M., at the same place.



1 New York City, February 28th, 1913.

The hearing was resumed at 2:30 o'clock P. M., on this, February 28th, 1913, at Hotel McAlpin, New York City.

The appearances were the same as at the morning session.

2 The Examiner stated that at the request of the witness, William Fox, original Petitioner's Exhibits Nos. 137 to 142, inclusive, had been returned to him, having been incorporated into the record of yesterday.

Thereupon J. L. CARLTON, the next witness subpoenaed by Petitioner, of lawful age, duly sworn, deposed:

Direct examination by Mr. GROSVENOR:

Q. Mr. Carlton, are you familiar with the motion picture art? A. Yes, to some extent.

3 Q. How long, or for how many years, have you been engaged in that business, in one line or another? A. About twelve years.

Q. In that period of time have you become familiar with the scientific end, as well as the business parts of the business? A. My particular connection with the moving picture industry has been from a technical point of view.

Q. What is your profession? A. Mechanical and electrical engineer.

Q. And where have you studied? A. Cornell.

Q. Cornell University? A. Yes, sir.

4 Q. And have you been an instructor at any time in any school of science? A. The Case School of Applied Science, Cleveland, Ohio, and director of the Carlton Laboratories for some time.

Q. For how many years has your time been devoted to the motion picture art? A. I have confined myself to the motion picture art exclusively since 1905, the latter part of 1904, I will say.

Q. With what company did you become connected in 1904? A. Gaumont Company, of Paris.

Q. In what capacity? A. Engineer.

Q. Were your duties in this country? A. I was here in 1906, in this country; began in 1906 in this country.

Q. In 1905 where were you working for them, abroad? A. In London and Paris.

Q. And what sort of duties did you have at that time with them, in the technical end, or in the business end? A. In the technical end, and in this country I was connected with the business end to some considerable extent.

Q. How long were you with the Gaumont Company? A. Seven years—eight years.

Q. Since you left the Gaumont Company what experience have you had in the motion picture art, name the companies? A. I left the Gaumont Company to build the Carlton Motion Picture Laboratories in New York, which I constructed and operated.

Q. After leaving the Carlton Motion Picture Laboratories, where did you go? A. After leaving the Carlton Motion Picture Laboratories, I went to the American Film Manufacturing Company, of Chicago, and then with the Universal Film Company, of New York, since last May.

Q. Now, during those years your experience has been principally in the technical side of the business? A. Yes.

Q. And have you gained knowledge of the various branches of the technical side, that is, of the taking of the picture, and the developing of the picture, and such other things as are necessary in order to produce a good moving picture? A. Yes, sir.

Q. Mr. Carlton, I want to get on the record a description of some of the important aspects, or phases, of the motion picture art. Now, beginning with the picture, what have you to say as to the importance of the film, its composition and quality? A. One of the most important factors is the film base.

Q. By "film" you are referring to the transparent, translucent tape-like film which is used in the reel— A. For the base.

Q. Yes. Now, what are the important qualities of the film? A. The important qualities of a base are that it should be transparent, free from obstructions to the light, and foreign matter of various kinds, be tough and flexible.

Q. You may state whether or not there was any successful moving picture business prior to the creation, or

1 production of a transparent and translucent film? A. Not to my knowledge.

Q. Who are the important manufacturers of this film? A. Eastman Kodak Company, Lumiere, Gaumont Company. To my mind the best celluloid base is manufactured by Poncheon.

Q. What do you mean by "base," the celluloid tape on which the emulsion is placed, the support? A. The support for the sensitized emulsion, which is placed on this celluloid base.

2 Q. Are any of these companies you have named manufacturers of moving pictures? A. I believe the Lumiere Company did manufacture moving pictures for a time, but they do not any more.

3 Q. Describe, not technically, this sensitized emulsion, as you call it, on the film? What is the purpose of it? A. Sensitized emulsion on the film is a solution of silver salts which is sensitive to light, or turns black when exposed to light, by reflecting images and light shadows against it; where light is reflected it will turn black, and where shadows are reflected it will remain normal, after it passes through this chemical solution, and the places where the light has not struck will be swept off.

Q. This film is the same sort of film, broadly speaking, as is used in the ordinary kodak? A. Substantially, yes.

Q. You may state whether or not, therefore, all the advances which have been made in photography generally so far as this photographic film is concerned, are used in the the motion picture art? A. The motion picture art is, aside from its mechanical features, the art of photography pure and simple.

4 Q. Now leaving the film, what is the next subject to be considered in the moving picture business? A. The lens, I should think.

Q. The lens for the camera? A. Yes, the objective lens for the taking of photographs.

Q. Why is that important? A. In order to reflect a perfect image on the sensitized surface.

Q. On the sensitized surface of the film? A. Yes, sir.

Q. You may state whether or not there have been improvements made in the art of making lenses in the past ten or twenty years? A. The manufacture of lenses has improved greatly in the last ten or twenty years.



Q. The manufacture of lenses has improved greatly in the last ten or twelve years? A. Yes, sir. The process of making the glass, the grinding, and so on, have been improved so we get a very much better lens than we formerly got. 1

Q. Is that one of the factors that contributes to a successful moving picture? A. A good lens is very necessary.

Q. Now, what sort of camera is used in the moving picture business? A. A mechanical device with an intermittent movement, and a shutter, so that the film is moved intermittently, and successive sections of it are exposed by means of the shutter while the film is at rest between periods of movement. 2

Q. After you take this film from the camera, after it has been exposed to the object of which the picture is to be taken, what is done with the film? A. It goes through a chemical process for fixing the parts in the cylinder that have been exposed to the light, and that being dissolved in metallic silver, those parts that were not exposed—it is a process called development, developing.

Q. The developing of the negative? A. Yes, sir.

Q. Now, in developing your negatives are the same principles applied as are applied in developing a picture from an ordinary camera not connected with the motion picture art? A. The only difference is the mechanical means of handling; the chemicals and treatment are the same. 3

Q. That is the mechanical difference of handling a thousand feet? A. Or a longer length.

Q. As compared with the handling of the spool that is taken from the camera? A. Yes, sir.

Q. Before you put the film in the camera, Mr. Carlton, is anything done to it, in the way of perforation? A. It is perforated along the edge. 4

Q. How is that done? A. By mechanical means, punches and dies.

Q. Do you use perforating machines? A. Yes, sir, we call them that.

Q. Is it or not important that the perforations should be made with regularity? A. It is necessary for the perforations to be very regular.

Q. And why is that? A. For the registration of the images in the intermittent movement.

Q. Have there been improvements made in the perforat-

1 ing machines which have been used in the time you have been interested in the motion picture business? A. Oh, yes.

Q. Who are the well known makers of perforating machines, Mr. Carlton? A. Bell & Howell Company, of Chicago, make one of the best perforators we have at the present time; it is a recent development, and a considerable improvement over some of the former efforts.

Q. What other names occur to you? A. Williamson, of London, makes a very successful perforating machine; and a number of manufacturers of moving pictures make perforating machines for themselves.

2 Q. Going back to the film, the negative film, what is done with the negative film after the image has been fixed by developing? A. It is used for making positive prints.

Q. And there again, you are following the ordinary process of photography? A. Yes, the ordinary photographic process.

3 Q. Is a printing machine used for that purpose? A. A machine is used—generally the images are printed one at a time, the image on the negative is placed in front of a window, back of which there is a light, which is cut off by a shutter. Over the negative the sensitized positive is placed, and is clamped down by a gate, and the shutter moved away to allow the light to show through on the negative, and against the positive, and these replace the image, the same as printing an ordinary photograph in a printing room.

Q. Have improvements been made in printing machines used in the art? A. Yes.

Q. Of what character? A. In accuracy of registration of one image over the other, and of rapid reproduction.

4 Q. When is the positive film perforated? A. Before printing.

Q. Must that be done with regularity as in the case of the negative? A. Yes, sir.

Q. Please state why this perforation has to be done with this regularity, what is the effect if it is irregular? A. If the perforation is irregular the images will not be accurately superimposed on one another, in their intermittent movement they will appear to dance and jump all about, and to be very unsteady.

Q. What causes that dancing and jumping? A. Either

inaccurate perforation or an inaccurate intermittent registering device. 1

Q. Or an inaccurate intermittent registering device?

A. Yes, sir.

Q. And why is it necessary that each picture be superimposed upon the preceding picture, I mean what effect does regularity have upon the image in the eye? A. The motion picture, as I understand it, is an optical illusion, and is based on the retentive power of the eye, and the retentive power of the eye is about 1/100th of a second, but it was found that so long as the object landed on the same focal place in each eye, each successive time, the normal eye retention period could be extended over about three times. Therefore, images projected at about, or objects, if placed before the eye, and taken away again, at about sixteen or eighteen times a second, would be made to appear to remain constantly before the eye, provided they landed each time in the same identical spot. 2

Q. Spot in the eye? A. Where the eye beheld them, landed at the same focal place in the eye.

Q. If they are not exactly superimposed they strike different points, is that it? A. Yes, and get all mixed up. 3

Q. Now, in this process of printing and developing the positives, is the development now in progress in the art, and which has taken place in photography, used also in the moving picture art? A. Yes, sir.

Q. After you have got your positive film, then what is necessary in order to exhibit it? A. A projecting machine.

Q. Please describe a projecting machine. A. A projecting machine consists of a mechanical device containing mechanism for intermittently moving the films, a shutter for cutting off the light during the time of movement, and a lamp, or lantern, for illuminating the photograph, and an objective lens for projecting. 4

Q. Are there any other features of a projecting machine? A. Those are substantially the requirements of a projecting machine.

Q. How many lenses are used in a projecting machine? A. Two sets of lenses.

Q. What are those? A. One, the objective lens, for projecting, and the condensing lens, for concentrating the light on the photograph.

Q. You may state whether or not there have been any



1 improvements made in projecting machines during the time you have been in the motion picture business? A. Projecting machines have been very materially improved.

Q. In what respects? A. As to their mechanical stability—

Q. Mechanical what, stability? A. Yes, sir, stability and solidity of construction; they have been made solid and substantial, and better made mechanically, more accurate in registration, and the lamps, or lanterns, have been considerably improved. The manufacturers of carbon have made very much finer and better carbon, so that we are able to get a considerably stronger and clearer light than we used to get a few years ago.

Q. Have the improvements which have been made in the lens had any effect in improving the quality of projecting machines? A. Yes, I think so.

Q. You may state whether there has been any improvement in the condenser. A. Yes, there has been improvement in the quality of the condenser, as to the quality of the glass.

Q. What is a condenser? A. A condenser is a combination of plain or convex lenses, placed in front of the source of light, to concentrate it to the aperture.

Q. What sort of a shutter is used in the projecting machines with which you are familiar? A. There are several varieties of shutters.

Q. By a shutter, you refer to the part of the instrument which cuts off the light while one picture is being succeeded by another picture? A. Yes, sir.

Q. Please describe the different kinds of shutters that you have seen used. A. A shutter, as a general proposition, is on a revolving axis, which rotates in unison with the movement of the film, with a solid part sufficiently broad to cover the light aperture during the period of movement of the film. In some cases, this is the only shutter used.

Q. That is a shutter composed of two segments? A. Of one single segment.

Q. Composed of a single segment? A. Broad enough to cover.

Q. The rest and opening? A. Yes, sir.

Q. Please continue. A. Sometimes the opening is broken by one or more narrow bars that pass in front of the light

opening while the film is at rest, the result being the breaking up of the light into shorter periods to assist optical illusion.

Q. Is any one of these shutters, or types of shutters essential as compared with the other types? A. Except as relates to the gear ratio of the shutter shaft to the movement of the film. In other words, a shutter with a single tab or wing if revolved twice, to a single movement of the intermittent, would give the same result as a shutter with two wings, revolved once, so it depends on the gear ratio, which shutter is most desirable.

Q. I direct your attention to page 24, of the answer of the Motion Picture Patents Company, to the page containing pictures of three shutters, entitled, respectively, "Latham," "Armat," and "Pross" shutters. Are those types of shutters with which you are familiar? A. Yes.

Q. From your knowledge of these appliances, are you able to state whether any one of those particular types is essential to a good projecting machine, that is, one in preference to the others? A. The shutter most essential is the one with a part broad enough to cut off the light during the period of motion.

Mr. WILLIS: Would you name it, or designate it, as you refer to the diagram, what page of the answer?

The Witness: The Latham, there.

Mr. GROSVENOR: He points out the Latham shutter.

The Witness: I didn't point it out—I don't point it out from the point of view as to its proportions. The proportion would be whatever the period of rest is, with relation to the period of motion of the projecting machine.

By Mr. GROSVENOR:

Q. Have you seen this type of Pross shutter used on some projecting machines? A. Yes.

Q. Have you seen such projecting machines using the

1 Pross patent in actual use? A. I have seen projecting machines in use with that type of shutter on them.

Q. That is with the Pross type of shutter? A. Yes, sir.

Q. You may state whether or not that type of shutter, basing your answer on your observation, has had any material effect in reducing the flickering, as compared with the Latham type of shutter, or a shutter with this single segment. A. I have seen projecting machines with a single segment shutter, which projected as flickerless a picture as I have ever seen.

2 Q. What sort of a shutter is used in the moving picture camera, Mr. Carlton? A. Usually a shutter with a single wing.

Mr. WILLIS: When you mean a single wing, which one do you mean, Latham or Armat?

The Witness: Latham.

By Mr. GROSVENOR:

3 Q. You mean like this Latham? A. Similar to the Latham.

Q. You do not mean that the segment— A. (interrupting): No. The size of it depends upon the ratio of the period of rest to the period of motion.

Mr. WILLIS: The gearing of the machine?

The Witness: Yes.

By Mr. GROSVENOR:

4 Q. You mean a single segment shutter? A. Yes, single segment. The segment being sufficiently large to cover the aperture during the period of motion only.

Q. Have you had occasion to observe the mechanism of the so-called Pathe cameras? A. Yes.

Q. Those cameras are made abroad? A. Yes.

Q. And imported? A. Yes.

Q. Have you within the last few months, seen any Pathe cameras just imported? A. Yes.

Q. You may state whether or not such cameras used a single segment shutter or a shutter with three of these



apertures, such as occur as in the Pross shutter? A. Single segment shutters were used. 1

Q. Are you familiar with the so-called Gaumont camera?

A. Yes, sir.

Q. Where is that camera made? A. In Paris.

Q. Are there any patents in this country on that camera?

Mr. KINGSLEY: I object to that as calling for a conclusion, beyond the knowledge of the witness.

The Witness: The Demeny patent on the so-called Gaumont camera has expired. 2

Mr. KINGSLEY: I move to strike that out because it embodies a conclusion. He says he thinks so. Obviously having no direct knowledge of the matter.

By Mr. GROSVENOR:

Q. You may state whether or not the Gaumont camera is based on a patent called the Demeny patent? A. Yes.

Q. Mr. Carlton, in 1908, you were connected with the Gaumont Company, weren't you? A. Yes, sir. 3

Q. What was your position with them? A. General technical director.

Q. Did you have anything to do with superintending of the sale of the films? A. Only of the talking picture films. The Cronophone. The ordinary films were handled by the Kleine Optical Company.

Q. Where were the Gaumont films manufactured? A. Ordinary films were manufactured in Paris.

Q. The negative and the positive? A. Yes.

Q. And were imported by the Kleine Optical Company? A. Kleins Optical Company. 4

Q. What was the Cronophone that you refer to? A. A combination of the phonograph and moving picture machine.

Q. Talking pictures? A. Yes.

Q. Where were those gotten up? A. Manufactured both in Paris and New York.

Q. Where in New York? What company? A. The Gaumont Company.

Q. Did the Gaumont Company build a plant over here for that purpose? A. Yes, in Flushing, Long Island.

1 Q. Did you have any position there at the plant? A. Yes, general supervisor.

Q. Did this Gaumont plant over here manufacture any positives in this country at that time? A. Of the talking pictures only.

Q. That is, they manufactured the films for the talking pictures over here? A. Yes.

Q. Prior to January, 1909, were some of those talking pictures exhibited in any of the theatres? A. Yes.

2 Q. You may state whether or not Gaumont took out a license with the Patents Company in 1909? A. He did not to my knowledge. No.

Mr. KINGSLEY: You mean by that you don't know?

The Witness: Not to my knowledge.

By Mr. GROSVENOR:

Q. Are you referring in your answer to these so-called talking moving pictures, or to the moving picture films imported by the Kleine Optical Company? A. Both.

3 Q. Do you know whether or not Gaumont took out a license respecting the foreign films which were imported by the Kleine Company? A. I believe that the license was granted to the Kleine Optical Company.

Mr. KINGSLEY: I move to strike that out on the ground that the witness is answering without knowledge of the fact.

By Mr. GROSVENOR:

4 Q. Prior to 1908 were motion picture films sold generally in the United States? A. I believe so.

Q. Were they sold as patented articles? Do you know or don't you? A. I don't think so.

Mr. KINGSLEY: I object to that and move to strike it out as being a conclusion of the witness. Evidently a guess.

The Witness: I sold pictures prior to 1908, which were not sold as patented articles.

Q. Which were not what? A. Which were not sold as patented articles. 1

Q. Whose films did you sell in 1908? A. A corporation known as the Gaumont Company of America and Cleveland, Ohio.

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Thereupon WILLIAM FOX, a witness subpoenaed by the Petitioner, is recalled for cross examination:

Cross examination by Mr. KINGSLEY: 2

Q. You are the President of the Greater New York Film Rental Company, are you not? A. Yes, sir.

Q. And were you the President of that company in 1908? A. I was.

Q. From whom was your company securing motion pictures in the last nine months of 1908? From the Edison licensees? A. Yes, sir.

Q. Were you securing pictures from the Biograph Company or from George Kleine during those nine months? A. No, sir. 3

Q. After the Patents Company was formed in January of 1909, did you continue to secure pictures from the Edison licensees, and did you also get pictures from the Biograph Company and from George Kleine? A. Yes, sir.

Q. Was Mr. MacDonald, to whom you have referred in your direct testimony, the Secretary of the Film Service Association? A. He was.

Q. And the Film Service Association paid him, I believe, for his services? A. I was not acquainted with the financial affairs of the Film Service Association.

Q. You did not pay any attention to what they did with the finances? A. Well, I did not know whether he was on a salary or not. I knew though, the final result was— 4

Q. (interrupting): At the windup of the Film Service Association, at its last meeting, he was voted a sum in cash, was he not? A. He was.

Q. And you voted for that, didn't you? A. Yes, sir.

Q. Did you get your films cheaper after the Edison licensees agreement was signed than you did before? A. I should imagine it averaged about the same.



1 Q. You think the price stayed along about the same?  
A. Well, it will average. Prior to that we were able to buy it at—

Q. (interrupting): I am not asking you about prior to that. Keep to the text. After this agreement was entered— A. (interrupting): For the first three months after; yes, sir.

Q. And then after that, the old price was practically re-established? A. No, no. After that the price was advanced considerably.

2 Q. Advanced from the cut price? A. The cut price was no more than—was not any cheaper than we were able to buy it before, on an average. That is taking everybody's film and averaging it up.

Q. Then the result was about the same? A. The cut price was about the same, and three months later we had to pay considerably more.

Q. What was the price charged by the Biograph Company and its licensees before the Motion Picture Patents Company was formed? Was it eleven cents a foot, less 6% for cash? A. You mean during the period—

3 Q. (interrupting): No, before the Motion Picture Patents Company was formed, and during the period of the existence of the Edison licensees? A. I was not purchasing from them and did not know their price. I should have said I was not purchasing from them during that period.

Q. Should you have also said you did not know their price? A. I did not know their price. Absolutely not.

4 Q. Didn't you say on your direct examination yesterday that the Edison licensees purchased films at the same prices, in fact, for less money, when you were relating the statement that you made to Mr. MacDonald at the meeting of the Film Service Association in January, 1909? A. I did not get that. If you will please read it.

Mr. KINGSLEY: Please read it, Mr. Stenographer.  
The stenographer repeats the question.

A. I don't grasp it now.

Mr. GROSVENOR: Read it again, please.  
The stenographer repeats the question.

Mr. GROSVENOR: I object to that question. It asks him two or three things in one question. I suggest it be reformed. 1

Mr. KINGSLEY: I insist on the question.

Mr. GROSVENOR: It says if he didn't sell for the same, in fact, less.

Mr. KINGSLEY: That is just what I am asking him. Didn't he make that statement?

By Mr. KINGSLEY:

Q. Didn't you swear yesterday, at pages 661-2 of the printed record: "I said, Mr. MacDonald, when you passed on the agreement for the exhibitors as Secretary of the Film Service Association, when the Edison agreement was given to us, one of the important reasons, or one of the urgent things that you persuaded us and showed us why we should accept that particular agreement as our Secretary, was on account of the fact that it did not change the relationship of doing business in any shape, manner or form, that we were purchasing films at the same prices, and in fact, for less money under the agreement than without the agreement." Didn't you state so? 2 3

Mr. GROSVENOR: I object to the question as improper, because it is very apparent from reading that, that is what MacDonald said, and the witness is simply repeating what MacDonald said.

Mr. KINGSLEY: I object to your telling him what his answers meant.

By Mr. KINGSLEY:

Q. Didn't you use those words yesterday, that I read? A. If you will let me have it again. 4

Q. Did you say that yesterday? A. I did. And I want to add to it.

Q. That is an answer. I just asked you if you said that yesterday? A. I did, and I want to add to it.

Q. I am satisfied with the answer. A. I am going to add to it, if you please. That we did buy just as cheap, and perhaps a little cheaper, for the first three months of the Edison license agreement.

Q. Now, I call your attention to your statement on page

1 662, in which you say, while still ostensibly talking to Mac-  
Donald: "You are here representing the manufacturers with  
an agreement that is absolutely different from the original  
Edison agreement, which is now taking away the right  
of the ownership of the film, and that is compelling us to do  
business under certain conditions." Did you say that as it is  
here? A. I will read the entire thing. This paragraph is  
right. I said that yesterday.

Q. Yes. Then you said to MacDonald, "that the new  
agreement is taking away the right of the ownership of the  
film, and that is compelling us to do business under certain  
2 conditions," and some further remarks? A. Yes.

Q. That is, you complained to MacDonald that this new  
agreement was taking away the ownership of the films? A.  
Yes.

Q. Are you familiar with the conditions of the Edison  
agreement? What did you just say? A. I am just thinking  
so that I can properly answer you.

Q. Are you familiar with the conditions of the Edison  
agreement? A. I cannot say that I am just now.

Q. You have not a copy of it there, have you? A. I have  
3 not seen it.

Q. I call your attention to the Edison license agreement,  
Petitioner's Exhibit No. 91, at page 350, and especially to  
paragraph 2, which says: "The purchaser shall not sell nor  
exhibit licensed motion pictures obtained from the vendor,  
but shall rent out such motion pictures only to exhibitors,  
who shall exclusively exhibit licensed motion pictures ob-  
tained from the vendor or from a duly licensed manufacturer  
under said re-issued letters patent, but in no case shall the  
exhibitor be permitted to sell or sub-rent or loan or otherwise  
dispose of said licensed motion pictures." Now, that para-  
4 graph was in the Edison license, wasn't it, yes or no, please?  
A. It was never enforced.

Q. Was it in the license? A. Yes, but it was never en-  
forced.

Q. You had signed it, had you not, and agreed to it? A.  
With a statement that it never would be enforced.

Q. Hadn't you signed it and agreed to it? A. With the  
statement that it never would be enforced.

Q. Now, I call your attention to Paragraph 5, page 352,  
of Petitioner's Exhibit No. 91: "The purchaser shall  
not sell, rent, or otherwise dispose of, either directly or



indirectly, any of the vendor's licensed motion pictures (however the same shall be obtained), to any persons, firms, or corporations, or agents thereof, who may be engaged either directly or indirectly in selling or renting motion picture films." Was that paragraph in the Edison license agreement that you signed? A. But never enforced.

Q. Was it in the agreement? A. It was in the agreement—

Q. (interrupting): That is all I want from you without qualification. A. It was in the agreement, and the statement, when it was tendered to us, was that it would never be enforced.

Q. Did you have any writing anywhere showing that was not to be enforced? A. It was—

Q. (interrupting): Did you have any writing showing anywhere that it was never to be enforced? A. It was one of the many statements that these people made from time to time.

Q. Did you have any written statement from these people at any time stating it was not to be enforced? A. I was foolish enough to believe the statements that they made that they were not going to hold to that.

Q. Did you have a written statement from them at any time to the effect that those two paragraphs were not going to be enforced? A. They were too smart to make written statements. They were making promises.

Q. Did you have one? A. I told you they were too smart to give that to us in writing.

Q. Did you have one? Would you mind saying yes or no to that? A. We did not have one, because they were too smart to give us one.

Q. Now, I will call your attention to Petitioner's Exhibit 91, Paragraph 8, page 353? A. Yes, sir.

Q. "The purchaser shall return to the vendor (without receiving any payment therefor, except that the vendor shall pay transportation charges incident to the return of the same) on the first day of every month, commencing seven months from the first day of the month on which this agreement is executed, an equivalent amount of positive motion picture film in running feet (not purchased over twelve months before) and of the vendor's make, equal to the amount that was so purchased during the seventh month preceding the date of each such return, with the

1 exception, however, that where any such motion pictures  
are destroyed or lost in transportation or otherwise, and  
proof satisfactory to the vendor is furnished as to such  
destruction or loss, the vendor shall deduct the amount so  
destroyed or lost from the amount to be returned." Was  
that paragraph in the Edison license agreement that you  
signed? A. It was.

Q. Will you turn to page 36 of the printed record? A.  
Yes, sir.

Q. Will you look at paragraph 9? A. Yes.

2 Q. I specially call your attention to paragraph 9 of  
Petitioner's Exhibit 8, page 40 of the printed record.  
(Reading): "The licensee shall return to each licensed  
manufacturer or importer (without receiving any payments  
therefor, except that the said licensed manufacturer or  
importer shall pay the transportation charges incident to  
the return of the same) on the first day of every month  
commencing seven months from the first day of the month  
on which this agreement is executed, an equivalent amount  
of positive motion picture film in running feet (not pur-  
chased or leased over twelve months before) and of the  
3 make of the said licensed manufacturer or importer, equal  
to the amount of licensed motion pictures, that was so  
leased during the seventh month preceding the day of each  
such return, with the exception, however, that where any  
such motion pictures are destroyed or lost in transportation  
or otherwise, and satisfactory proof is furnished, within  
fourteen (14) days after such destruction or loss, to the  
licensed manufacturers or importers from whom such  
moving picture was leased, the licensed manufacturer or  
importer shall deduct the amount so destroyed or lost from  
the amount to be returned." Was that paragraph in the  
4 Motion Picture Patents Company agreement which you  
signed? A. Mr. MacDonald called our special attention  
to that paragraph—

Q. (interrupting): He did, and you signed it, did you?  
Did you sign it? A. Mr. MacDonald called our special  
attention to that paragraph—

Q. (interrupting): I am not asking you that. I asked  
you if that was in the agreement which you signed?

Q. Did you sign it? A. To that paragraph, Mr. Mac-  
donald—

Q. (interrupting) : Did you sign this agreement containing that paragraph? A. To that paragraph— 1

Q. (interrupting) : Was this paragraph in the agreement which you signed? I want to know if you signed this agreement. Now, without reference to Mr. MacDonald? A. To that paragraph Mr. MacDonald—

Q. Now, Mr. Fox, I ask you to answer that question. Will you read the question again, Mr. Stenographer? A. I remember the question, sir.

Q. Did you sign the agreement? A. That paragraph—

Q. (interrupting) : Now, did you sign the agreement containing that paragraph? A. That paragraph— 2

Mr. KINGSLEY (interrupting) : I object. I insist on a categorical answer. If you do not answer, we will take it up to the Court.

The Witness: That suits me.

By Mr. KINGSLEY :

Q. Did you sign it? A. You have answered it for me. That suits me. 3

Q. Did you sign that agreement? A. I am trying to explain what occurred.

Q. You did sign it, didn't you? A. I say I am trying to explain what occurred.

Q. You signed this, didn't you, "yes" or "no?" A. Not allowing me to explain, I will say our company did sign it.

Q. You had some conversation with Mr. MacDonald, didn't you, shortly after the adjournment of the Film Service Association? A. I so testified yesterday.

Q. And he told you if you lived up to the contract, it will not be terminated? A. Now— 4

Q. (interrupting) : Did he tell you that? A. Do you want me to tell you what he told me?

Q. Did Mr. MacDonald tell you if you lived up to the contract it would not be terminated? A. He did not tell me that under—what to expect under this license agreement.

Q. I think that you said that at the first time you talked to Mr. Kennedy, he took out from his pocket a memorandum? A. Yes, sir.

Q. And quoted some price to you? A. Yes, sir.



1 Q. When was the next time you talked with him about prices? A. After the license of the Greater New York had been cancelled.

Q. How long a time elapsed before this conversation with Mr. Kennedy about prices, and the second conversation? A. Oh, I imagine it is about two months.

Q. On the second occasion, what did he do when he took up the question of prices, and by that I mean, what did he do about the figures? You gave some testimony to the effect that he took part of the figures out of his pocket and part out of the safe. A. I still say the same thing.

2 Q. Yes. What did he do? Just tell us what happened then. A. I testified to what happened, yesterday.

Q. Yes; but now your memory is good, I assume, still? Tell me what happened when you say he took part of the figures out of his pocket and part out of the safe? A. Exactly what I testified to yesterday.

Q. Page 683? A. Yes, sir.

3 Q. I think you testified yesterday: "He put his hand in his inside coat pocket and got out a slip of paper, and then went in to the safe and took out another slip of paper." Is that what he did on that occasion? A. He took one slip of paper out of the safe. The other slip of paper he took out of his pocket.

Q. Where was this interview? A. At his office at the lower end of Broadway.

Q. What number? A. I don't know the exact number now.

Q. Now, on the first interview, he could take the figures right out of his pocket without reference to the safe? A. Why do you blame me for that?

Q. I am asking you if he did? A. He did.

4 Q. And on the second interview, he had to take part out of his pocket, and part out of the safe? A. That is what he done.

Q. When was it that you went to see Albert Smith? A. After the license had been cancelled by the Patents Company.

Q. Who went with you the day you went to see Albert Smith? A. I drove down in my car. My chauffeur took me there, and I was accompanied by a friend of mine, whose name is Jacob W. Low, who resides at 312 West 93rd Street.

Q. He is the Jacob W. Low you referred to yesterday as having owned a film exchange? A. No, sir. 1

Q. That is not the one? A. I had not referred to any Jacob W. Low who owned a film exchange.

Q. Did you refer to any Low yesterday? A. I referred yesterday to Marcus Loew, who owned the People's Film Exchange.

Q. It was not the same man? A. It was not.

Q. When was it that Mr. Smith made an affidavit relative to the conversation you had with him and regarding which you expressed surprise? A. Well, I guess the record will show that. I don't know the exact date. 2

Q. Sometime in December of 1912? A. I will give you the exact date if you will let me look at the record.

Q. Is that the affidavit (indicating)? A. One on the 26th day of December and one on the 27th day of December.

Q. The affidavit to which you referred was made on the 27th of December, wasn't it, 1911, and purported to relate to something about a conversation that you had with Mr. Smith? A. I will take a look at it again. I did not read that just now. I don't know whether both had reference to that or one of them. 3

Q. (Hands paper to witness.) A. I refer to both of them. I say he lied in both of them. He told me he had not voted for it. His affidavit shows that he did vote for the cancellation.

Q. In the affidavit of December 27th, he said that you asked him why the license had been cancelled, and he told you you had violated the terms of the license, and mentioned the fact that some of the films leased to your company had been taken into New Jersey to an unlicensed place. Was that in one of the affidavits to which you refer? A. What is the question you asked? 4

Q. Will you read the question?

The stenographer repeats the question.

Mr. GROSVENOR: I object to that as an attempt to offer in evidence this affidavit, which, of course, is an improper way of proving what Mr. Smith may have thought of the transaction and the interview.

1           The proper way to prove it is, of course, to call Mr. Smith and subject him to cross examination.

          Mr. KINGSLEY: I press the question.

By Mr. KINGSLEY:

Q. Was that in one of the affidavits to which you refer?  
A. I do not get the drift of what you are trying to do.  
What is it you want to know?

2           Q. Do you recall that in the action of the Greater New York Film Rental Company against the Biograph Company and others, an affidavit was filed, signed by Albert Smith, on or about December 27th, 1911? Do you recall it?

          Mr. GROSVENOR: I object to that question as immaterial and having no bearing on the issues in this case. The fact of what Smith may have done is certainly not relevant here.

3           Mr. KINGSLEY: This witness has testified to a conversation he had with Mr. Smith, yesterday, and referred to this affidavit. It is a perfectly proper matter for cross examination. He went into a lengthy explanation as to why he went into a conversation that he stated had been confidential, and the witness stated that the reason was that Mr. Smith made an affidavit, consequently he felt free to reveal what happened in that conversation. A perfectly proper subject for cross examination. What is the question, Mr. Stenographer?

          The stenographer repeats the question.

A. Yes.

4           By Mr. KINGSLEY:

Q. Did that affidavit contain this statement: "Mr. William Fox, President of the Greater New York Film Rental Company, called to see me shortly after the middle of November, 1911. He asked me why his license had been cancelled, and I told him he had violated the terms of his license, and mentioned the fact that some of the films leased to his company had been taken to New Jersey in an unlicensed place. He said that that was something that one of



his boys did, and that he was not responsible." Was that statement in that affidavit? A. What? 1

Q. Was the statement which I have just read you in the affidavit which Mr. Smith made?

Mr. GROSVENOR: I object to that.

A. I don't know anything about the book you have got there.

Q. Will you look at the book and see if it is there? A. It might be in the book, but that is not the original affidavit. I want to see the original affidavit before I say it is the original affidavit. 2

Q. Can't you tell? A. I cannot tell without seeing the original affidavit.

Q. Now, Mr. Fox, was that statement in the affidavit? A. You don't want me under oath to say that that was a statement in the affidavit that he signed? If you will bring me the affidavit that he signed, you will see if it is in there or not.

Q. Did you see the affidavit which was used in that case? A. Did I see the affidavit which was used? 3

Q. Yes. At any time? A. I really don't know whether I did see it or whether the contents of it were given to me by my attorneys, or not.

Q. You did swear yesterday, did you not, that after learning the contents of that affidavit, you felt free to divulge the confidential conversation with Mr. Smith? A. I said yesterday that after learning the contents of the affidavit by Mr. Smith, I felt free to tell the true version of what occurred at his office.

Q. And this was the first time you divulged what that conversation was? A. I never betray a confidence when I pass my word, and I did pass my word when we got done talking at his office that I would not say anything about it. 4

Q. But it was not until after this affidavit to which you have referred, was either shown to you, or your counsel had told you its contents, that you said anything at all about the conversation with Mr. Smith? A. I did not make mention of it to the Court until after that had occurred, yes, sir.

Q. Was Mr. Rogers advising you at the time you were negotiating with Mr. Kennedy? A. Mr. Rogers knew nothing

1 about any of my negotiations until such time as I got from Mr. Kennedy the agreement for the sale of the plant.

Q. And what time was that? A. I think you will find that time is best fixed between the withdrawal of the first cancellation—between the first cancellation and the withdrawal of the same, after they agreed to buy.

Q. What did you do with that agreement? A. I don't know now whether it is at my office or whether I have still got it at the office of Rogers & Rogers, or whether Mr. Rogers disposed of it, or what he done with it.

2 Q. You have not seen it recently? A. I have not, sir.

Q. You don't know whether it is at your office, or not? A. I don't know.

Q. Will you make a search for it? A. I will be glad to make a search at my office for it.

Q. Now, I think you said in the conversation with Mr. Kennedy, he told you the Film Company had no right to buy your plant without a license? A. He said that, or words to that effect.

3 Q. And he told you that that license had to be reinstated in order that he could make a purchase, or that the Film Company could make a purchase? A. Yes, sir. By "Film Company," you mean the General Film Company?

Q. Yes. I call your attention to Exchange License Agreement between the Motion Picture Patents Company and the Greater New York Film Rental Company, dated January 20th, 1909, signed, "D. MacDonald, General Manager," and "Greater New York Film Rental Company, by L. Rosenbluh, Secretary."

4 Mr. GROSVENOR: I wish to note on the record here that the counsel for the defendants now produces the exchange license agreement, representing which he was so vociferous that the witness should answer certain questions, and over which we spent fifteen or twenty minutes, a little while ago, the same having been produced by himself, from among his own papers.

By Mr. KINGSLEY:

Q. And I ask you if that is the license agreement by which your firm was licensed to proceed under the Patents

Company agreement? (Handing paper to witness.) A. I cannot tell that. I could not swear that was Rosenbluh's signature. 1

Q. Don't you know Rosenbluh's signature? A. I don't know that well enough to say that is, under oath. No. You had Rosenbluh here yesterday—

Q. (interrupting): How long have you known Rosenbluh; how long has Rosenbluh been in your office? A. I have known Rosenbluh since he was a boy, but I would not swear that was any signature of his.

Q. You have known him since he was a boy, and how long in your office? A. Ten or 12 years. 2

Q. Have you been familiar with his signature while he has been in your office?

Mr. GROSVENOR: I object to that on the ground the witness has not been qualified to prove a signature.

A. I won't say I am familiar enough with it to testify under oath that he signed it. I charged a man yesterday with signing a letter, and he brought his wife to me and he proved to me conclusively that she signed the letter, and not he. And I have known him for twenty years. 3

Q. I don't care about that. I want to know whether you will say he signed it.

A. The reason I don't is because I am not a handwriting expert.

Q. That is not a sufficient reason in business life, where a man is in your office for years. A. I charged a man yesterday with his signature, and he brought his wife to me yesterday, and she swears she signed his name, and, by gosh, I have seen that man's signature a thousand times. 4

Q. Have you any doubt that that is Mr. Rosenbluh's signature here? A. I am not put on under oath here to tell you anything I have any doubts of. You had Rosenbluh here yesterday, and you can get him here again.

Q. Will you turn to page 36: I call your attention to Paragraph Second of the Motion Picture Patents Company agreement, Petitioner's Exhibit No. 8, page 38, and ask you to read the last sentence: "It is further understood and agreed by the licensee that the license hereby granted is a personal one and not transferable or assignable, and the licensee hereby recog-



1 nizes and acknowledges the validity of the said reissue letters patent No. 12,192—" A. (interrupting) : Since then, the Courts held that this patent is not a valid patent, you know.

Q. I am not speaking about the patent. I am asking about that sentence. You read it over with me as I went over it, didn't you? A. I will read it again.

Q. Having read it, do you still say that Mr. Kennedy told you that it would be necessary in order for the General Film Company to purchase your business, that it should be reinstated? A. I most emphatically do.

2 Q. All right, sir. You told us something yesterday about kinemacolor pictures. There are not very many of those in the market, are there? A. Talking to an agent for the kinemacolor the other day, he impressed me as though there were a good many. From my personal observation, I really don't know how many there are or how many there are not.

Q. He told you there were a lot of them? A. He told me there were a good many kinemacolor films in the market.

Q. Then you don't know much about them personally?  
3 A. I don't know the number or the quantity there is in the market.

Q. Have you that letter here from Pathe Freres which was shown here yesterday?

Mr. GROSVENOR: That letter was put in evidence.

By Mr. KINGSLEY:

Q. Will you look at page 689: this question appears:  
"Q. After the cancellation of your license by the Motion Picture Patents Company? A. I did. I got a letter on  
4 November 20th from Pathe Freres, which was six days after the date of the cancellation. In this letter, they wished me very good luck in another line of business." A. Yes, sir.

Q. Now, will you turn to page 690, and tell me where it is that they wished you good luck in another line of business? A. Now, do you want a yes or no? Do you want an explanation to that, or what do you want? I am going to try to please you now.

Q. Read the letter, if you wish. A. You want me to read the letter. "We have been advised by the Motion Picture Patents Company that your license agreement with the said concern will terminate on Monday, December 4th." That, in my opinion, means that I am out of business. 1

Q. You are going to read the letter now. You are not going to give us a sermon. We don't want an oration. A. I am going to tell you what this letter means, in my opinion of it.

Q. If you are going to sermonize about it, I don't want you to read it. A. (reading): "We have therefore been instructed to discontinue delivery of films to you on or after the above date." That puts me out of business again. 2

Q. Go ahead. A. (reading): "We regret very much that we have to discontinue business relations with you in this line." I am out again.

Q. Keep right on reading. This is the letter that you are reading. A. (reading): "Wishing you the best of success." They cannot wish me success with motion picture film any more, they must have wished it in some other line.

Q. This was a letter from one concern, wasn't it? A. Yes, sir.

Q. Just one manufacturer? A. Just one manufacturer. 3

Q. How did you know that was Pathe Freres when you were so doubtful about signatures? A. How do I know what?

Q. That it was Pathe Freres, when you were so doubtful about signatures? A. I did not say my eyesight was bad. The letterhead shows it.

Q. Is the letterhead better than the signature, in your opinion? A. Is a letterhead better than a signature?

Q. Yes. Does that prove everything to you, when a signature does not? A. Don't you think that Pathe Freres sent that letter? 4

Q. I am not on the stand, Mr. Witness. You are the person who is to answer.

Redirect examination by Mr. GROSVENOR:

Q. Counsel for the defendants has asked you to produce papers relating to that contemplated sale of your company

1 to the General Film Company if you have preserved them. Were those papers typewritten? A. They were.

Q. Were the typewritten copies given to you by Mr. Kennedy, or from his office? A. They were sent by a messenger, and the messenger said he came from Mr. Kennedy's office.

Q. And they were typewritten when you received them? A. Yes, sir. They were either typewritten or a printed form.

2 Mr. GROSVENOR: The witness has one answer which he feels was not complete, or in which he did not make clear his position. What is it?

The Witness: Before, the counsel for the General Film Company or his people said that I would have a perfect right to explain later with regard to the paragraph referred to for the return of the film, when Mr. MacDonald—

Mr. KINGSLEY (interrupting): I object to the witness making the statement, on the ground that the agreement speaks for itself.

3 The Witness (continuing): read the agreement, they referred to the clause relating to the return of film, but under this agreement he said, "I will make it very clear to you that you will have to return the film." And for that reason I said that we were then beginning to operate under the hardships in taking away the film that really belonged to us, that we were getting under the Edison license agreement.

By Mr. GROSVENOR:

4 Q. This was said by Mr. MacDonald in January, 1909? A. Yes, sir.

Q. Had you at any time returned film under the earlier Edison agreements? A. They did not ask for it at all. They simply let you slide along.

Q. Is there anything else you wish to say? A. That is all. I simply wanted to clarify that one thing.

Recross examination by Mr. KINGSLEY:

Q. How long had the Edison license agreement been in



effect in January, 1909? A. If you will let me look at the agreements I can see. You have them in your office—and I will tell you. 1

Q. I am talking about the Edison license agreements. How long had it been in effect in January, 1909? A. I don't know. If you will let me look at some of those records here, I can tell you the dates of the organization of that company.

Mr. GROSVENOR: It was about March of 1908. I think the beginning of the year. 2

By Mr. KINGSLEY:

Q. March of 1908, Mr. Grosvenor says. The beginning of the year. So it had been in effect about ten months? A. What was the date of the Patents Company? 3

Q. I am not asking about that. I was asking about the dates of the Edison license agreements. A. Why do you say it is ten months?

Q. Because Mr. Grosvenor says it was executed about the first of March, 1908. A. And when was the Patents Company executed? 3

Q. Early in January, 1909. A. That makes it about ten months.

Q. So that that arrangement had only been lasting about ten months at that time? A. That is the time.

At this point an adjournment is taken until Saturday, March 1st, 1913, at 10:30 A. M., at the Hotel McAlpin, New York City.



Mr. DWIGHT MACDONALD, appearing for Mr. Rowland. 1

Mr. JOHN HILL MORGAN, specially appearing for the Kinemacolor Company of America.

Thereupon JAMES L. CARLTON resumed the stand.

Cross examination by Mr. KINGSLEY:

Q. I think you said yesterday, Mr. Carlton, that since you have been in the business there has been marked improvement in cameras and projecting machines? A. Yes, 2  
sir.

Q. And the style and detail of those have changed from year to year, have they not? A. Not in basic principle.

Q. What I said was the style changed, and the detail has changed, from year to year? A. Yes, sir.

Q. So that some changes and some reconstruction were necessary? A. Yes, sir; there has been a considerable number of changes in facilitating operation, and that sort of thing, supernumerary changes. These changes have arisen more or less from reconstruction.

Q. I think you said the same basic principle still applied? A. Yes, sir. 3

Q. The machines are heavier and more durable than when you began business? A. Yes, sir; considerably.

Q. And in some cases more expensive, are they not? A. Yes, sir.

Q. Are you familiar with the types of projecting machines in common commercial use to-day? A. Yes, sir.

Q. Do you know of any type of projecting machine in common commercial use to-day in this country that has an intermittent motion of the film that does not use a shutter which obscures the light during all, or a greater portion, of the time during which the film is being moved from picture to picture? A. I do not. 4

Q. There is no such machine that you know of in this country? A. I have never seen any, and I don't believe such a machine is practical.

Q. Do you know of any commercial type of projecting machine in common commercial use in this country to-day, that has an intermittent movement of the film, that does not have a shutter that interrupts the light one or more times during the time while the film is at rest? A. No.



- 1 Q. Do you know of any commercial type of projecting machine in common commercial use in this country to-day, that has an intermittent movement of the film, that has a single bladed shutter that makes but one revolution for each picture, that does not expose the picture on the screen for a period greater than the period during which the light is obscured? A. No.
- 

- 2 Thereupon LEWIS M. SWAAB, the next witness subpoenaed by Petitioner, of lawful age, duly sworn, deposed.

Direct examination by Mr. GROSVENOR:

Q. Where do you reside? A. Where have I resided?

Q. No. Where do you reside? A. 5646 Walnut Street, Philadelphia.

Q. In what business are you engaged, Mr. Swaab? A. In the selling of motion picture machines, supplies, films, etc.

- 3 Q. How long have you been engaged in that business?  
A. Nine years.

Q. And how long have you been engaged in the motion picture business, in one branch or another, of that business?

A. Altogether fifteen years. I was in the employ of one for six years, and in business for myself nine years.

Q. You established the Swaab Film Service Company in the year 1904? A. 1904, April 16th, yes.

Q. In Philadelphia? A. Yes, sir.

Q. What articles were you handling as a film exchange?

- 4 A. All films that were made by the various companies now owned by the Patents Company, as I understand it, all their films.

Q. Please name some of the manufacturers of films from whom you were buying the pictures prior to the beginning of the year 1908? A. The Vitagraph, Biograph, Lubin, Edison, Pathe, Selig, Essanay. I just don't recall any others; perhaps Melies, I am not sure about Melies.

Q. Were these various manufacturers in competition with each other, as to prices and terms of sale? A. Yes; well, no; I want to correct that. The prices were about

the same all the way through. The prices were about the same. 1

Q. That is in the year 1907? A. Yes, sir, except that, for instance, I recall of one case where they used to sell at less than what was known as the average price, for instance, the average price was known as ten cents in those days.

Q. Were the films sold to you as patented articles in those days? A. No, sir.

Q. Were they sold to you without restrictions by the Edison Company, and the others? A. Yes, to the best of my recollection; I do not recall any restrictions. 2

Q. From what manufacturers were you buying projecting machines in those years? A. From Powers, Edison Company, Lubin and Enterprise Optical Company, of Chicago.

Q. And were those machines sold to you without conditions? A. Yes, sir; their catalogues read that they were sold without restriction.

Mr. KINGSLEY: I object to that, and move to strike it out, the catalogue itself being the best evidence. 3

By Mr. GROSVENOR:

Q. I show you a pamphlet entitled "Edison Projecting Kinetoscopes." Is that a catalogue which you received in the course of business? A. Yes, sir.

Q. Prior to the beginning of 1908? A. Yes, sir.

Q. And then, did you order some of the articles named in this catalogue? A. Yes; quite frequently.

Mr. GROSVENOR: This catalogue may be marked as an exhibit of the petitioner, for identification. 4

Thereupon, the pamphlet referred to, entitled "Edison Projecting Kinetoscopes," was marked

**Petitioner's Exhibit No. 143.**

for identification, but need not be incorporated into the record.

1           Mr. GROSVENOR: I read into the record from the page on the inside of the cover, the following sentences in the paragraph entitled "Terms" (reading):

"Edison Projecting Kinetoscopes and Films are sold outright without territorial restrictions. We do not lease, or rent machines, or films. We do not ship machines, or films, on approval. We do not deal in second hand machines, or take old machines in exchange, or trade."

2           By Mr. GROSVENOR:

Q. During the year 1908, you may state whether or not your company joined the Film Service Association. A. We did, yes.

Q. During that year, you may state whether or not your company bought films from the manufacturers who were so-called Edison licensees? A. Yes, we did.

Q. You didn't buy, during that year, from the Biograph Company, or George Kleine? A. No.

3           Q. In January, 1909, you may state whether or not you attended a meeting of the Rental Exchanges, in New York City, at the Hotel Imperial. A. I did.

Q. Was that a meeting that was largely attended? A. Well, there were, perhaps, from sixty to seventy-five members there.

Q. All being rental exchanges? A. Yes, sir; known then as the "Film Service Association."

Q. Do you recall whether or not one MacDonald read the so-called license exchange agreement? A. Yes, sir.

Q. That was read in the meeting? A. Yes, sir.

4           Q. Was that the first that you knew about the plan to submit such an agreement to the rental exchanges for signature? A. Yes; the first I knew about it.

Q. Was that the first time you saw a copy? A. Yes, sir.

Q. You may state whether or not the persons owning rental exchanges present made speeches opposing that agreement? A. There were quite a number who did, I can't recall their names; in fact, the majority objected to it.

Q. You mean the majority of those present, or the majority speaking? A. The majority of those present, quite a number to whom I spoke. Several did object,



and among them I recall that Mr. Swanson and Mr. Fox objected to a number of provisions. 1

Q. Was a committee appointed to see the manufacturers? A. Yes, sir; I believe that Mr. Swanson was chairman of that first committee.

Q. Was any change made in the agreement, as a result of this committee meeting the manufacturers? A. Nothing of any importance, no important change was made.

Q. Did you finally sign the license agreement? A. Yes, sir.

Q. You may state whether or not there was an adequate source of supply of films for your rental exchanges in the country at that time, outside of the manufacturers who had become members of this license association under the Patents Company. A. There was not an adequate supply of good film. 2

Q. In the year 1909, and also in the year 1910, how many other licensed exchanges were there doing business in the City of Philadelphia? A. In the first stages, there were five. One was subsequently cancelled—that was the Philadelphia Film Exchange. That left four remaining, until the General Film Company came into existence. 3

Q. Were these different film exchanges in competition with each other? A. Yes, very much so.

Q. Now, you may state whether or not in the years 1909, and 1910, you observed the terms of the license agreement? A. I did.

Q. You may state whether or not in May, 1910, you had some correspondence with the Motion Picture Patents Company in connection with a certain rule of that exchange license agreement? A. I did.

Q. Were some of your customers located outside the city of Philadelphia? A. Yes, sir.

Q. Did you have a customer in Baltimore? A. Yes, sir, I did. 4

Q. What is meant by the "release day?" A. The day on which a film may be rented, a special day set apart by the manufacturers to release, or give out that film.

Q. And is there an hour fixed when it becomes released? A. I am not sure, but I believe it says "eight o'clock."

Q. Was that one of the rules which you were required to observe by the license exchange agreement? A. So I believe.

1 Q. And did you do your best to observe that rule? A. Absolutely.

Q. How would you supply from your Philadelphia office, this Baltimore customer? A. I sent a special messenger from my office to the railroad station, in an automobile, in order to catch a certain train.

Q. What time did the train leave? A. It left Philadelphia at 8:15, and arrived in Baltimore at 10:30.

Q. In order to catch that 8:15 train, what time would the messenger leave your office? A. Between five and ten minutes of eight o'clock.

2 Q. And when would the reel of film be received in Baltimore? A. About eleven o'clock, between a quarter of eleven and eleven o'clock.

Q. Under subpoena you have produced certain correspondence with the Motion Picture Patents Company; I show you letters exchanged between you and that company, between May 12, 1910, and May 30, 1910; and ask you whether this correspondence has relation to your supplying film to that customer in Baltimore? A. Yes, sir.

3 Q. For whose use it left your office at five or ten minutes to eight o'clock? A. Yes, sir.

Mr. GROSVENOR: We offer that correspondence in evidence, and also the check attached thereto.

The check and correspondence referred to were marked as Petitioner's Exhibits Nos. 144, 145, 146, 147, 148, 149 and 150, and are as follows:

**Petitioner's Exhibit No. 144.**

4 LEWIS M. SWAAB  
338 Spruce St.  
Philadelphia, Pa.

20 m-3-28-10  
No. 2516 Philadelphia, May 30 1910  
The Philadelphia Trust Safe Deposit and Insurance Company  
413, 415 & 417 Chestnut Street  
Pay to the order of Motion Picture Patents Co.  
one hundred 00/100 Dollars  
\$100.00/00 Jun 3 1910 LEWIS M. SWAAB

(On back.)

Pay to the order of Empire Trust Co. Motion Picture Patents Co.

**Petitioner's Exhibit No. 145.**

1

## MOTION PICTURE PATENTS COMPANY

80 Fifth Avenue, New York

May 12, 1910

Mr. Lewis M. Swaab,  
338 Spruce St.  
Philadelphia, Pa.

Dear Sir:

Replying to yours of the 7th.

2

It appears that for some time you have been violating the release day rule by your service to the Wizard Theatre in Baltimore.

This violation on your part will be presented to our Board, for action, at their next meeting. In the meantime please discontinue the violation immediately.

Yours very truly,

MOTION PICTURE PATENTS COMPANY

HNM/JK  
X—93

By M

3

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**Petitioner's Exhibit No. 146.**

May 13th, 10

Motion Picture Patents Co.,  
#80 Fifth Avenue,  
New York, N. Y.

Gentlemen:—

4

I am in receipt of your letter of May 12th in which you state that it appears that I have been violating the release day rule for sometime. I gave you the notes in the case in a recent letter, and in view of the fact that the alleged violation was a matter of ten minutes, I do not think so much importance should be attached thereto. I have notified the Wizard that the films will be shipped by express in the future on release day, but I think it would be nothing more than



1 fair to have shipments made so that the Exhibitor could not  
use them before nine or ten oclock on release day.

Yours very truly,

LEWIS M. SWAAB.

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**Petitioner's Exhibit No. 147.**

**MOTION PICTURE PATENTS COMPANY**

2 80 Fifth Avenue, New York

May 26th, 1910

Mr. Lewis M. Swaab,  
Philadelphia, Pa.

Dear Sir:

3 You are hereby notified that at a meeting of the Manu-  
facturers held at this office on May 25th, it was decided that  
you should be required to pay a penalty of \$100. for violating  
the release day rule by shipping films from your office prior  
to 8 A. M. on release day, payment to be made on or before  
June 1st, 1910.

Yours truly,

**MOTION PICTURE PATENTS COMPANY**

By H. N. M.

HNH/JK

X—93

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**Petitioner's Exhibit No. 148.**

4 May 27th, 10

Mr. H. N. Marvin, Pres.  
Motion Picture Patents Co.,  
#80 Fifth Avenue,  
New York, N. Y.

Dear Sir:—

I am in receipt of your letter under date of May 26th in  
which I am informed that by the action of the manufacturers

I was fined the sum of \$100.00 for violating the release day rule by shipping films from this office prior to 8 A. M. on release day. 1

I think this action is most arbitrary and without good and sufficient reason. It is what might be called "splitting hairs" since the messenger who carries the film does not leave this office until 7.50 to get an 8.15 train, a distance of twenty-four blocks. The train does not arrive into Baltimore until 10.30 and I fail to see in what manner any great wrong has been done.

As a matter of principle, I think it would have been only reasonable for the Manufacturers to have had me at their meeting rather than to take such cold blooded action without any means of redress. 2

It is not merely a matter of dollars and cents, but the principle involved and I appeal to you, as a fair minded business man, to go over this matter before imposing a fine. I enclose an addressed stamped envelope for reply. Thanking you for same in advance, I remain

Yours very truly,

LEWIS M. SWAAB. 3

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**Petitioner's Exhibit No. 149.**

MOTION PICTURE PATENTS COMPANY

80 Fifth Avenue, New York

May 28th 1910

Mr. Lewis Swaab,  
Philadelphia, Pa.

4

Dear Sir:

Replying to yours of the 27th.

Exchanges have been repeatedly notified that films must not leave the office of the exchange prior to 8 A. M. on the morning of release day.

In the case of a violation of this rule the hour at which the violation occurred is not important. In your own case you obtained the same unfair advantage over your competitors that you would have obtained had your messenger been

1 compelled to leave your office at 7 o'clock instead of 7:50.

This rule operates to your advantage as well as to the advantage of your competitors, and the action of our Board will not be reconsidered.

Yours truly,

MOTION PICTURE PATENTS COMPANY

By H. N. M.

HNM/JK

X-93

2

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**Petitioner's Exhibit No. 150.**

May 30th, 10

Motion Picture Patents Co.

#80 Fifth Avenue,  
New York, N. Y.

Gentlemen:—

3 In answer to your letter of May 28th in which you insist on the payment of \$100.00 because of an alleged violation of one of the rules. I cannot refrain from saying that the rule in this case is arbitrary and without justice. The fact that the film did not leave Philadelphia until eight-fifteen would have been considered reasonable by any fair minded man.

4 You state that I obtained unfair advantage over my competitors by my action. I fail to see how you arrive at this conclusion as the Baltimore house could not possibly use the film at the same time with my competitor, in other words, the competitor at Baltimore could place the film in service at eight o'clock in the morning almost three hours ahead of my customer.

I enclose my check for \$100.00 which I feel justified in saying is paid under protest. I do not consider the action by the manufacturers tempered with justice by any means.

Yours truly,

LEWIS M. SWAAB.



By Mr. GROSVENOR:

Q. This Wizard Theatre in Baltimore, referred to in Exhibit 145, is the exhibitor you have been testifying about?

A. Yes, sir.

Q. And this violation, which they refer to, is the matter of your sending it from your office five or ten minutes before eight o'clock? A. Yes, sir.

Q. Referring to this letter of May 28th, 1910, you may state whether or not it was about this time that the General Film Company appeared upon the scene doing business as a rental exchange? A. I won't say positive as to the date but more or less around that time.

Q. Is this (showing witness Petitioner's Exhibit 144) the check? A. Yes; it is.

Q. This is cancelled? A. Yes, sir.

Q. About how much film a week had you been taking from the manufacturers, during the years 1909 and 1910? A. Well, that varied. Anywhere from twenty to twenty-three or twenty-four reels a week.

Q. That, in dollars and cents, amounted to how much that you were paying them a week? A. About twenty-three or twenty-four hundred dollars per week.

Q. And was your company prosperous, and prospering? A. Yes, sir.

Q. About the time of this letter, that is, about May, 1910, had one of those five licensed exchanges in Philadelphia been cancelled? A. Yes, sir; the Philadelphia Exchange.

Q. What became of the three licensed exchanges in Philadelphia, which were competing with you in May, 1910? A. They were bought by the General Film Company.

Q. Was there a man named Lubin, a licensed manufacturer, who was interested in one of these exchanges? A. Yes, sir.

Q. Which Lubin was that? A. Siegmund Lubin, the licensed manufacturer.

Q. You knew him personally, didn't you? A. I was in his employ for six years prior to going into business for myself.

Q. You may state whether or not you had any conversations with Lubin in the Summer of 1910, relative to the General Film Company and the selling of his business,

1      and the selling of your business. A. Yes. He sent for me—

Mr. KINGSLEY (interrupting): Just say yes, and then let him ask the next question. I want to object.

By Mr. GROSVENOR:

Q. Please state the circumstances of those conversations. How you happened to see him and what he said, to the best of your recollection?

2

Mr. KINGSLEY: Objected to as incompetent, irrelevant and immaterial, being hearsay, and not binding upon any of the defendants.

Mr. GROSVENOR: This is one of the defendants, Lubin.

The Witness: Shall I answer?

By Mr. GROSVENOR:

3      Q. You understand that I am referring to Siegmund Lubin?

Mr. MELVILLE: Then I object to it, as not binding upon any of the defendants, except Lubin.

The Witness: Yes, I thoroughly understand you.

By Mr. GROSVENOR:

4      Q. The Director of the General Film Company, and President of the Lubin Manufacturing Company? A. Yes, sir; I thoroughly understand you. He sent for me on three separate occasions. He was then in his office at 926 Market Street, and on each occasion he told me—that was prior to the formation, or rather, prior to the time when the General Film Company bought out the other three exchanges—he told me that the Patents Company, through his influence, was going to take care of me, and wipe out all the others, so that he and I would control the exchange situation in Philadelphia.

Q. Did he say how that was to be done? A. No, sir;

he pretended to know a great deal that he would not tell me at the time, but he felt at liberty to tell me that. He 'phoned to my office to come up and see him on three separate occasions, and each time it was the same story.

Q. This was before the General Film Company was formed? A. Well, it may have been formed. Before they took over the other exchanges.

Q. Do you know J. A. Berst? A. Yes, sir.

Q. Who is he? A. He is the Vice-President, I believe, of the Pathe Freres Company.

Q. Is Pathe Freres one of the manufacturers from whom you were getting films in the Summer of 1910? A. Yes, sir.

Q. You may state whether or not you had any conversation with Mr. Berst. A. I did.

Q. In regard to the selling out of your business? A. I did; yes, sir.

Q. When was that? A. That was—I cannot fix the date.

Q. Approximately? A. In the Summer of 1910.

Q. July or August? A. More or less. I cannot give you the date exactly.

Q. Was that after or before the General Film Company had acquired the business of the three other exchanges in Philadelphia? A. After. That was after they had acquired those exchanges.

Q. How did you happen to see Mr. Berst? A. Mr. Berst's representative, one of his salesmen, came to Philadelphia, and asked me why I did not call on Mr. Berst. I told him that I did not know why I should. I did not think Mr. Berst cared to see me. He said—

Mr. KINGSLEY: I object to any conversation that the witness may have had with any one alleged to be Mr. Berst's representative, as incompetent, immaterial and irrelevant, hearsay, not binding upon any defendant in this case.

By Mr. GROSVENOR:

Q. You may state whether or not you saw this man later with Mr. Berst? A. I not alone saw him with Mr. Berst, but he sold me some goods the day he called on me. Sold me Pathe goods, and they were delivered to me.



1 Q. Now, continue.

Mr. KINGSLEY: I repeat the objection.

A. He told me if I would buy some goods that day, it might be of great use or interest to me later on.

Q. After this interview with this Berst representative, you may state whether or not you saw Mr. Berst in New York? A. I did.

Q. Shortly after? A. Yes, sir.

2 Q. Where did you see him? A. In his office.

Q. Who else did you see there? A. This same gentleman. I cannot recall his name. I would know it if I heard it. It is a foreign name. Mr. Berst took him and I out to lunch that day, and we returned to the office and talked over business matters.

Q. Now, was anything said by Mr. Berst about the sale of your business to the General Film Company? A. He asked me if I had been down to see Mr. Waters. I told him no, I did not think Mr. Waters wanted to see me—

3 Mr. KINGSLEY: I object to any conversation that the witness may have had with Mr. Berst, as incompetent, irrelevant and immaterial, hearsay, and not binding upon any of the defendants except Berst.

The Witness: I wanted to tell it in my own way. He sent me down to see Mr. Waters, of the General Film Company, at No. 10 Fifth Avenue.

By Mr. GROSVENOR:

4 Q. Did you go down there? A. I did.

Q. And whom did you see there? A. I saw Mr. Waters, who subsequently introduced me to Mr. Kennedy.

Q. What talk did you have with Waters first?

Mr. KINGSLEY: I object to any conversation between the witness and Mr. Waters, as it is not shown that he is an officer of any of the defendants and as incompetent, immaterial and irrelevant, and not binding upon any defendant in this case.

By Mr. GROSVENOR:

1

Q. Where did you see this man Waters? A. At No. 10 Fifth Avenue.

Q. Was he the General Manager of the General Film Company? A. Yes, sir.

Q. You may state what conversation you had with Mr. Waters? A. He asked me if I wanted to sell my business I answered, yes. He then called Mr. Kennedy from an adjoining room, and introduced me. Shall I go on?

Q. Yes. A. Mr. Kennedy stated that he could not make his estimate there, because it was Patents Company business. He did not suppose that the Patents Company would object if he would look over their records, and he and Mr. Waters and myself went to 80 Fifth Avenue, the Patents Company office, and there they examined the records of what I had purchased.

2

Q. Did you meet in a private room there at the Patents Company? A. Subsequently. But at first, we did not. He took me into an open office. Do you want the conversation?

Q. Well, anything that is material. Yes.

3

Mr. KINGSLEY: I object to any conversation that the witness may relate between himself and Mr. Kennedy, as incompetent, immaterial and irrelevant, hearsay, and not binding upon the defendants.

By Mr. GROSVENOR:

Q. I want the conversation that you had with Mr. Kennedy and Mr. Waters in relation to the sale of your business. Do you understand? A. I understand.

Q. As far as you can recall it, relating to this transaction. A. Well, then, we repaired—we had been there for a few minutes, we repaired to a private office. Mr. Kennedy and Mr. Waters took the records from the Patents Company and went into an adjoining room, leaving me in the outer office, and they finally returned and made me a proposition to buy my place.

4

Q. How much did they offer you? A. \$37,000.

Q. How much had your company been making a year? A. A rough calculation, about \$25,000 or \$30,000.

Q. You may state whether or not the fact that the Gen-

- 1 eral Film Company had been organized and had acquired these other companies in Philadelphia had any effect upon your willingness to sell your business?

Mr. KINGSLEY: Objected to as incompetent, irrelevant and immaterial, as calling for a condition of the witness's mind at the time, which is not binding upon any defendant, and has no probative value or force in this proceeding.

- 2 The Witness: Will you please read that question again so that I can understand it?

The question is repeated by the stenographer.

The Witness: Yes, sir.

By Mr. GROSVENOR:

- Q. You may state what the character of the competition was that you had with the General Film Company after it acquired these three exchanges in Philadelphia, and before  
3 this interview in New York City.

Mr. KINGSLEY: Objected to as incompetent, irrelevant and immaterial, and not binding upon any defendant here.

A. I found that I could not compete with their prices. Of course, those three exchanges, while running in the three different places, were naturally the one concern, and they could underbid me, which they often did.

- Q. Now, going back to this meeting at the Patents Com-  
4 pany office between Kennedy, Waters and yourself, have you stated all that you have in mind? A. They offered me the usual terms. Part cash. I suppose that is understood. And I told them I would like to consider it. Mr. Kennedy told me that I could not leave the room—

Mr. KINGSLEY (interrupting): I object to that as incompetent, immaterial and irrelevant.

The Witness (continuing): That I would either have to



accept or reject. If I left the room it was off. Those were his words. Then he offered to stay up all night with me if I wanted to consider the matter, but I could not leave the room, and knowing what they had done—

Mr. KINGSLEY: I object to this as a description of a condition of the witness's mind, which is incompetent, immaterial and irrelevant, and not binding upon any defendant here.

A. I knew I could not meet their competition, and I said I would sell.

Q. Then did you return to Philadelphia? A. I returned to Philadelphia, yes, sir.

Q. Did you subsequently have some correspondence with the General Film Company with regard to the sale of your property? A. Yes, sir.

Q. And in regard to the matter of the date when the transfer should become effective? A. I did, yes, sir.

Q. What date did you suggest? A. I think it was September 1st.

Q. You may state whether or not they agreed to that? A. They did.

Q. And did you finally sell your property? A. No, sir.

Q. What was the reason? A. They refused to give me anything in writing which I requested. I asked for a document to show my legal advisor. The correspondence would show that they ignored all my letters—

Mr. CALDWELL: I object to that.

Mr. KINGSLEY: Objected to as incompetent, immaterial and irrelevant.

Mr. GROSVENOR: Do not state the contents of the correspondence.

The Witness: Well, they did not give me the contract I asked for, and I refused to turn over my property to them.

By Mr. GROSVENOR:

Q. Did you have any conversation in regard to your being employed as manager? A. I had correspondence. I want to correct that. I did have conversations with both Mr. Waters

1 and Mr. Kennedy originally when I was over in New York as to taking charge of my own place as manager.

Q. You may state whether or not they said that you would be so employed. A. Yes, sir, they asked me to accept the position.

2 Q. I show you this correspondence. Is this the correspondence which you had with this General Film Company between August 6th and August 29th, and was it subsequent to this interview in New York City? A. This first letter and answer, is subsequent to the conversation I had and to my visit. August 6th, 1910, from the General Film Company, and August 8th from myself.

Mr. GROSVENOR: I offer that as one exhibit, but I do not want the Examiner to copy that into the record.

The papers were marked Petitioner's Exhibit No. 152.

By Mr. GROSVENOR:

3 Q. Are all of these papers originals? A. They are all originals, yes, sir.

Mr. CALDWELL: All of this correspondence is objected to on the ground that it is incompetent, immaterial and irrelevant, and not shown to be made by any one authorized to bind all of these defendants.

By Mr. GROSVENOR:

4 Q. Mr. Swaab, toward the end of August, these negotiations regarding the sale of your property to the General Film Company were terminated, is that right? A. Yes, sir.

Q. Thereafter your company continued doing business as you had before? A. Yes, sir.

Q. Did you have any trouble with them later? A. Yes, sir.

Q. I mean with the Patents Company? A. Yes, sir.

Q. Please state what that was. A. They accused me of renting films for sub-rental purposes.

Q. Had you done that? A. Absolutely no.

Q. I show you a letter dated December 21st, 1910, and two letters of yours that you wrote in reply, dated Decem-

ber 22nd, and December 23rd. Please state whether these letters were received by you or written by you, and have relation to this trouble in respect to which you have just testified? A. Yes. The reason I separated them, I see one is addressed to the Patents Company, and one to Mr. Berst.

Mr. GROSVENOR: I offer those in evidence, to be marked Petitioner's Exhibits Nos. 152-A, 152-B and 152-C, respectively.

Mr. CALDWELL: This correspondence is objected to on the same grounds as those above stated.

Mr. KINGSLEY: I wish to object especially to Petitioner's Exhibit 152-C purporting to be a letter addressed to Mr. J. A. Berst by the witness, on December 23rd, 1910, on the ground that it is incompetent, immaterial and irrelevant, on the ground that it is not the original letter; on the ground that it is a self-serving declaration of the witness, and has no relation to the matters at issue here.

By Mr. GROSVENOR:

Q. Mr. Swaab, before these letters which have just been marked Exhibits 152-A, B and C, were written, had you had a conference at New York with any of these manufacturers? A. Yes, I had.

Q. Mr. Swaab, I show you a telegram dated December 15th, 1910, signed by Mr. J. A. Berst. I ask you if you received that telegram? A. Yes, sir.

Q. This telegram which I offer in evidence reads "If you intend to come next week, please do not call Monday, as I will be engaged at the Patents Company in an important meeting. J. A. Berst." What does this all have reference to? Please state. A. A few days prior to the receipt of that telegram, Mr. Berst called on me personally.

Q. Where? A. At my place at 338 Spruce Street.

Q. Please state what conversation you had with him, to the best of your recollection? A. He asked me what the trouble was between the General Film Company and me, and I explained, and told him that I refused to give up the



1 property until they would give me the contract in writing.  
He condemned both Mr. Kennedy—

Mr. KINGSLEY: I object to that as the conclusion  
of the witness.

By Mr. GROSVENOR:

Q. Please state what he said? A. That is what I am  
trying to do. He did say that Mr. Kennedy and Mr. Smith  
—himself and Mr. Smith—were members of that committee,  
2 and Mr. Kennedy had no authority to answer for the com-  
mittee without consulting them, and he invited me to New  
York to his office and he said that he would buy the place  
in the name of the General Film Company, and see that I  
got a contract.

Q. A contract of services? A. No, no; a contract in  
writing that they would pay me so much for my business,  
which they had refused before. He guaranteed that he  
would get that for me.

Mr. KINGSLEY: I object to that statement that he  
3 guaranteed anything, as being a conclusion of the  
witness.

By Mr. GROSVENOR:

Q. What did he say? A. He told me that I would have  
a contract. Then we appointed a time when I was to come  
over to New York, and then sent me that telegram post-  
poning it.

The telegram quoted is received in evidence and  
4 marked Petitioner's Exhibit No. 153.

By Mr. GROSVENOR:

Q. Exhibit No. 153? A. Yes, sir. He postponed the  
meeting. I wired an answer appointing a day when I would  
be there.

Q. I show you this telegram, or copy of telegram, dated  
12-16, 1910, and state whether that is the telegram you  
sent in reply to the telegram from Mr. Berst? A. That is  
the copy in my own handwriting.

Mr. GROSVENOR: I offer those in evidence.

Copy of telegram from Swaab Film Service Company to J. A. Berst is marked Petitioner's Exhibit No. 154, and is as follows:

"12-16-10.

J. A. Berst, 41 West 25th Street,

Care of Pathe Freres, New York, N. Y.

Message received with thanks. Expect to call on you Wednesday morning of next week.

(Paid) (Signed) Swaab Film Service Company."

By Mr. GROSVENOR:

Q. State whether or not you did meet Mr. Berst subsequently in New York as provided for by the telegrams? A. I went there on that day and presented myself and met the same man whom I spoke of before, who went into Mr. Berst's private office and came out and said he could not see me that day. That he was attending a very important meeting.

Q. Then did you see Mr. Berst? A. No, sir.

Q. And you came home? A. I came home that same afternoon.

Q. Now, directing your attention to Exhibit No. 152A, you may state when you received that letter. A. On December 22nd.

Q. That was before or after you had gone to New York to see Mr. Berst? A. After I had gone to New York.

Mr. GROSVENOR: I will read that, and I want to put it in at this point.

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**Petitioner's Exhibit No. 152A.**

**MOTION PICTURE PATENTS COMPANY**

80 Fifth Avenue, New York

Dec. 21, 1910

Mr. Lewis M. Swaab,  
Swaab Film Service Co.,  
Philadelphia, Pa.

Dear Sir:

We have received evidence of your violation of the Con-

1    ditions of our Exchange License to you, in that you have  
leased or otherwise supplied licensed motion pictures to  
others for sub-rental, which is a violation of Sections 3 and  
6 of the Exchange License; and that you have violated Sec-  
tion 12 of said Conditions by supplying licensed motion pic-  
tures to an exhibitor and failing to supply the name and loca-  
tion of the place of exhibition.

2    Before taking final action on these violations we wish  
to give you an opportunity to explain or present any excuse  
you may have to offer as to why your License should not be  
cancelled, and you are therefore requested to call at this  
office on Tuesday, December 27th. Please advise us by return  
mail if you intend to call, and at what hour.

Yours truly,

MOTION PICTURE PATENTS COMPANY

WP/JK

By W. P.

3    Mr. GROSVENOR: The next is the letter of yourself  
to the Motion Picture Patents Company, dated Decem-  
ber 22nd, 1910, marked Petitioner's Exhibit 152B.

**Petitioner's Exhibit No. 152B.**

Dec. 22d, 1910

Motion Picture Patents Co.

80 Fifth Avenue,

New York City, N. Y.

Gentlemen:—

4    Replying to your registered letter of the 21st inst, I will  
call on you at your office on Tuesday, December 27th, about  
eleven o'clock.

I will make no effort in this letter to make any defence,  
suffice it to say that I have anticipated action of this kind  
for some time as my letters addressed to you from time to  
time will show since my competitors promised certain of my  
customers that they would bring about the very condition  
which now exists.

I would suggest that you invite the former proprietors of



the Philadelphia Exchanges to meet me in your office on Tuesday next.

Yours truly,

LEWIS M. SWAAB.

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Mr. GROSVENOR: And the letter addressed to Mr. J. A. Berst, December 23rd, 1910.

**Petitioner's Exhibit No. 152C.**

Dec. 23d, 1910

Mr. J. A. Berst,  
41 W. 25th Street,  
New York City, N. Y.

My dear Sir:—

Confirming my message by letter and telegram last week I called at your office on Wednesday last and was informed that you could not be seen, having an important meeting to attend.

Yesterday, I received a letter dated December 21st, (the day I called at your office), in which the Patents Co. request me to call on them on Tuesday next to show cause why my license should not be cancelled because of alleged violations of their rules. I do not know by whom I am accused nor am I concerned as to the identity of the scoundrel since there are many identified with the film business today who would not hesitate to use perjury to further their own interests.

I regret that you could not see me on Wednesday and presume you will attend the meeting on Tuesday above referred to.

I am in receipt of a letter from a customer in the South in which he advises me that Tom Moore, your representative I believe in Washington, D. C. reports that the General Film Co. have no intention of buying my Exchange as they intend to "freeze me out." This is the identical report made by the former proprietors of the three Exchanges in this city. They do not know how to guard their tongues for Calhuff is said to have reported today that I have been censured by the Patents Co. and that I am to be tried by them next week.

It is time that this deplorable condition of affairs should

1 he ended, and I welcome the meeting on Tuesday. All I ask is the SQUARE DEAL, in which case I have no fear of the result.

Yours truly,

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By Mr. GROSVENOR:

2 Q. Exhibit No. 152A says, "We have received evidence of your violations of the conditions of our exchange license to you in that you have leased or otherwise supplied license motion pictures to others, for sub-rental." You may state whether or not you had done that? A. Never. I never did.

Q. It is also stated: "You have violated Section 12 of said conditions, by supplying licensed motion pictures to an exhibitor, and failing to supply the name and location of the place of business." You may state whether you had violated the agreement in the manner stated there? A. I did not.

Q. You may state whether or not you had done your best to live up to all the terms of the license agreement? A. I did, sir.

3 Q. You may state whether you called at the office of the Patents Company on December 27th? A. I did.

Q. Whom did you see there? A. Mr. Marvin.

Q. You may state whether or not Mr. Marvin gave you the opportunity referred to in this letter, Petitioner's Exhibit No. 152-A, to explain, or present any excuse you might have to offer as to why your license should not be cancelled? A. He did not.

Q. What transpired at that interview? A. Why, he took up a copy of the license agreement.

4 Q. A printed copy— A. (interrupting): A printed copy of the license agreement and read the entire document to me.

Q. Aloud? A. Yes, sir. We were there in the office. He and I. He read that entire document to me, and I interrupted once or twice and asked him why he read that. Why not make his accusation if he had any to make, but he insisted upon reading that document. And I did not know then after I left that day of what I was accused, except that he repeated that letter. The contents of that letter. I did not know to whom he referred. And I was promised a hearing which I never got.

Q. How long were you there? A. I should say an hour or less. Not any more. 1

Q. Then did you come away? A. I came away, and came back to Philadelphia that same day.

Q. When did you next hear from the Motion Picture Patents Company? A. I next heard from them on January 4th.

Q. That was a few days after you had had this interview with Mr. Marvin? A. Yes, sir.

Q. I show you a letter dated January 3rd, 1911, on the letterhead of the Motion Picture Patents Company. Is this the letter which you have produced, and is that the letter in respect to which you have just testified? A. Yes, sir. 2

Mr. GROSVENOR: I offer that letter in evidence. And I will read this letter. On the letterhead of the Motion Picture Patents Company:

Petitioner's Exhibit No. 155 is marked in evidence as follows:

**Petitioner's Exhibit No. 155.**

MOTION PICTURE PATENTS CO., 3

80 5th Avenue.

New York, January 3rd, 1911.

Mr. Louis M. Swaab,  
338 Spruce Street,  
Philadelphia, Pa.

Dear Sir:

The license granted by this company to you to sub-lease motion pictures is hereby cancelled for violation on your part of its terms and conditions relating to the use of such pictures, and we notify you to return all licensed motion pictures to the respective licensed manufacturers and importers thereof, upon the expiration of 20 days from this date. 4

Yours truly,  
MOTION PICTURE PATENTS CO.  
By H. M. Marvin, Vice-President.

FH/M.V  
X-93  
Registered.



1 By Mr. GROSVENOR:

Q. Mr. Swaab, you may state whether or not you had been given any opportunity for a hearing on this question of whether you had violated the terms and conditions of your license agreement? A. I never violated the terms or conditions, and I never was given a hearing except the one I have just referred to, when the license agreement was read to me word for word, but I never had an opportunity to defend myself.

2 Q. Did you discuss the matter with Mr. Marvin? A. I tried to.

Q. Would he discuss it? A. No. He insisted upon reading that document to me.

Q. Later on in January, you may state whether or not you had a visit from anybody? A. Yes, sir; I did.

Q. When was that? A. On the 24th day of January.

Q. 1911? A. 1911; yes, sir.

Q. Please state what happened on that day? A. Four men representing the Patents Company, and four deputy sheriffs came down and took charge of my place. Put me out of business in about three hours.

3 Q. Were some replevin suits brought against you about that time? A. Yes, sir. Ten replevin suits.

Q. By whom? A. One in each of the manufacturers' names. The licensed manufacturers' names.

Q. That is, Pathe, Biograph, and the others who were licensed? A. Yes, sir; ten of them.

4 Q. Were the following the ones: The Biograph Company, Edison Mfg. Company, Essanay Film Mfg. Company, the Kalem Company, George Kleine, Lubin Mfg. Company, Melies Mfg. Company, Pathe Freres, Selig Polyscope Company and the Vitagraph Company? A. Yes, sir; those were the ones. Those are the ten.

Q. You may state whether or not these sheriffs had any description of the property being taken? A. Yes, sir.

Mr. KINGSLEY: I object to that as being a conclusion of the witness.

By Mr. GROSVENOR:

Q. How did these men take up their position in your place of business? A. One, Coffey, by name, went behind the

counter, and handed the reels across to one Church, who laid them aside as his property, as the property of the Patents Company.

Q. Is that Durant Church, connected with the Patents Company here in this city? A. Yes, sir. He had a record of the Patents Company showing the titles of the different films, and they just took charge of anything they wanted.

Mr. KINGSLEY: I object to all this as incompetent, irrelevant and immaterial, and ask to have the objection noted in the proper place on the record, before the answer, and I also object to it on the further ground that it is not competent under the pleadings. It is not embraced in the petition here.

Mr. GROSVENOR: This evidence is all introduced tending to prove predatory acts of competition of these defendants.

Mr. KINGSLEY: Objected to on the ground that no predatory acts are alleged.

Mr. GROSVENOR: And their unfair means of competition, which are amply set out in the petition.

By Mr. GROSVENOR:

Q. You may state whether or not these men made a search of your property? A. They examined every film in the place.

Q. Were people coming in, your customers, during the day, to do business with you? A. Yes, sir.

Q. Were they able to do business with you? A. Yes, sir.

Q. I say, were they able to do business with you? A. Oh, no. They would not allow anybody to carry any of them out. In fact, they stopped several of them. Opened their cases and took several of them out.

Mr. KINGSLEY: I object to that and move to strike it out as being a matter between the alleged Deputy Sheriffs and the customers.

By Mr. GROSVENOR:

Q. Did you make any protest to these Sheriffs and these Patents Company people that were there? A. Yes, sir, I did.

Q. Did they pay any attention to you? A. Absolutely not.

1 Q. What effect did that visit have upon your business?  
A. Well, I could not do any business, and after they left, I had no films to supply any customers with, except a lot of old back numbers that I had purchased long before the Patents Company was in existence.

Q. What became of your customers? A. They left and went to the other exchanges. The other, as we called them, "Trust Exchanges."

Q. Have you brought any suits against these persons for their action on that day? A. I contested their action, yes, sir.

2 Q. And how many suits did you bring against these ten manufacturers for their action on this day?

Mr. KINGSLEY: Objected to on the ground that the witness had not testified that he brought any suits.

By Mr. GROSVENOR:

3 Q. Please answer the question. A. If you will permit me to explain in my own way, perhaps I don't understand your legal lore. They issued these ten writs of replevin against me, and I am contesting their action now. I am really the defendant in these cases. They are the plaintiffs.

Q. Has one of these suits been tried? A. Yes, sir.

Q. And how did the verdict come out?

Mr. KINGSLEY: Objected to as incompetent, immaterial and irrelevant and on the ground it has not been shown there was any verdict.

By Mr. GROSVENOR:

4 Q. What was the verdict, if any, rendered in that case?  
A. \$1,800, last May.

Mr. MELVILLE: I object to that on the ground that that that is incompetent. The record of the Court is the only competent evidence of what happened in legal proceedings.

By Mr. GROSVENOR:

Q. In whose favor? A. In my favor against Lubin.

Q. The verdict of the jury was \$1,800? A. \$1,800.



Mr. KINGSLEY: I now move to strike out the witness' evidence regarding an alleged verdict in his favor, on the ground that it is incompetent immaterial and irrelevant, and not the best evidence, a certified copy of the judgment of the Court being the only evidence admissible in this action.

1

By Mr. GROSVENOR:

Q. How many years before had you been doing business with these different manufacturers? A. About six years.

Q. And during this period of 1909 and 1910, you had been buying, you say— A. (interrupting): From all manufacturers.

2

Q. From \$2,000 to \$2,500 a week? A. About \$2,200 or \$2,300 a week.

Q. And had you been making your payments promptly? A. Regularly, every week.

Q. You were subpoenaed in this case? A. Oh, yes.

Q. And where were you subpoenaed? A. In my office.

Q. In Philadelphia? A. In Philadelphia.

Q. In these ten suits did they have the same lawyer? A. Yes, sir; the same lawyer represented the same manufacturers in these ten suits.

3

Q. Who is their attorney? A. He is now Alexander Simpson. The one they had at first was Francis Rawle.

Q. They all had Francis Rawle, didn't they? A. Yes, sir. The writs were served through Francis Rawle's office. Ten writs.

Q. They all changed to Simpson? A. All changed to Simpson.

4

Thereupon ARTHUR H. SAWYER, resumed the stand for cross examination.

Cross examination by Mr. KINGSLEY:

Q. How many factories are there of kinemacolor films in this country? A. Two.

Q. Are they both under the control of your company? A. Yes.

- 1      Q. Do you license anyone else to manufacture?    A. No.  
       Q. Are the kinemacolor positives practically the same as the monochrome positives which you described yesterday?  
       A. Well, the same in what way?  
       Q. I mean in respect to the film and the composition of the film, and the general appearance?    A. Yes.  
       Q. After that, they are subjected to a special process?  
       A. No.  
       Q. The color effect is obtained by an apparatus, is it not?    A. Can I just explain that a bit and perhaps make it clearer?
- 2      Q. Yes.    A. The negative film is specially sensitized.  
       Q. That, you said, was a secret process?    A. Yes. The positive film is printed just the same by contact printing as with any monochrome film.  
       Q. Do you use Eastman film?    A. Yes, sir.  
       Q. Your photographs on the negatives are spaced equally on the film, are they not?    A. I presume so. That end of the business—that is the technical end. I am not in the manufacturing end of the business.  
       Q. I see. You do not pay any attention to that?    A. No.
- 3      Mine is getting the money after the films are made.  
       Q. Then you really do not profess to know about that particular detail?    A. I do not profess to know about the technical end of the business.  
       Q. You are not, then, familiar with the camera used in making the kinemacolor picture?    A. I am not.  
       Q. You have not made any personal examination of the projecting machine, have you, from the standpoint of one desiring to be acquainted with its mechanism?    A. I am not a technical expert, no.
- 4      Q. Is your projecting machine a high-priced instrument?  
       A. Yes.  
       Q. What is the price of them?    A. We do not sell them.  
       Q. You do not sell them. They are all leased, are they?  
       A. Rented.  
       Q. And how many of them do you have?    A. Well, you mean how many have we in stock now?  
       Q. How many have you in stock now?    A. That is a pretty broad question. I don't know. It is a matter of record.  
       Q. Have you got a hundred?    A. Probably several hundred.

Q. You have not over a hundred and seventy-five, have you, in the whole stock? A. I should think we have all of that. 1

Q. Just about that? A. That is a matter of record. Possibly 200.

Q. And wherever you are showing these colors, of course, you have to have one of these special projecting machines in the theatre? A. Yes.

Q. Your kinemacolor pictures are patented, are they not? A. The process is patented. The process of manufacturing.

Q. And you do not license anyone else to make them at present in this country? A. We do not. No. The other point that I wished to bring in, I stated that they are put out as an exclusive proposition. That does not mean, the word "exclusive"—does not exclude any other pictures from being used in connection with ours. 2

Q. What does it mean? A. It means that we are limited in our output, owing to the fact that our output has been crippled, and we have not been able to put our films in the houses that wanted them, and naturally, we have not expanded the business and made as many pictures as we are in a position to make, that is, that we are financially in a position to make, for the market is not broad enough for us to go to the extent of putting out ten or fifteen producing companies. The result is our output of reels per week is limited, so that we cannot handle more than one theatre in any general locality and keep those theatres apart, as can be done with the black and white productions. 3

Mr. GROSVENOR: That is, you give your pictures to one theatre in one locality?

The Witness: In one locality. 4

By Mr. KINGSLEY:

Q. Why do you wish to keep the theatres apart? A. Because we do not want two men in the same block showing the same pictures at the same time.

Q. And in a small town, you only want to show them in one theatre? A. One man.

Q. And it would be a considerably larger town, where you would have two theatres? A. Yes, sir.



1 Q. You have not shown it in two theatres in any of the smaller towns; at the same time, I mean? A. Yes, that has been done.

Q. Where? A. Well, Louisville, Kentucky. That is not a small city.

Q. How large? Three hundred thousand or four hundred thousand? A. No, there are no small cities, because we have not gone into very many small cities.

2 Q. After you start to exhibit in a small city, a small town, you do not license anyone else to exhibit in that town, do you? A. Not unless the man who has the pictures consents to it.

At this point, the hearing was adjourned until 2:30 P. M. at the same place.

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New York City, March 1, 1913.

The hearing was resumed at 2:30 o'clock P. M., March 1, 1913, at Hotel McAlpin, New York City.

3 The appearances were the same as at the morning session.

Thereupon, WILLIAM PELZER, resumed the stand.

Direct examination (continued) by Mr. GROSVENOR:

Q. What have you brought down to-day? A. I have a statement handed to me by Mr. Scull of the Motion Picture Patents Company.

4 Q. This is a statement entitled "Special Payments Made by Licensed Exchange Exhibitors." Is this term "Special Payments" the amounts paid by these companies named on the list as being payments of fines imposed for violations? A. I assume that it is.

Q. For the violations of the agreements? A. Yes, I assume so.

Mr. GROSVENOR: I will ask that it be marked, and I will determine later whether I will introduce it.

The paper entitled "Special Payments Made by Licensed Exchange Exhibitors" was marked "Petitioner's Exhibit No. 156."

By Mr. GROSVENOR:

1

Q. Have you anything else? A. That is all.

Q. Have you prepared that list of theatres whose licenses were cancelled, and I refer you to pages 339 and 340 of the record? A. I understand that list, or a duplicate set of cards is being prepared; I don't know whether it is actually completed or not.

Q. When did you last make inquiry as to the condition of that list? A. From Mr. Scull this morning.

Q. Didn't you find out whether it was finished before you came down here? A. I am no longer connected with the Motion Picture Patents Company in any capacity.

2

Q. What is your present position? A. Treasurer of the General Film Company.

Q. Who succeeded you as Secretary of the Patents Company? A. I believe, Mr. Scull.

Mr. GROSVENOR: I will ask counsel for defendants whether they have that list ready.

Mr. SCULL: Frankly, I do not know whether it is completed or not; I know they are working on it, and it is possibly completed.

3

Mr. GROSVENOR: Will you try and expedite it so we can have it at the next hearing? What about the list of replevin suits you have been requested to produce? What has been done in that direction, Mr. Pelzer?

The Witness: You have such a list; I handed you a list of replevin suits over a year ago.

By Mr. GROSVENOR:

Q. Has that been brought down to date? A. I don't know, but I don't presume it has been.

4

Mr. SCULL: That list was given you by Mr. Pelzer some time back.

Mr. GROSVENOR: When do you mean?

Mr. SCULL: At one of the hearings.

The Witness: I understood I had furnished everything called for.

1           Mr. GROSVENOR: You may have brought it down,  
but I do not have any recollection of it being brought  
down. I have read the testimony, and I do not find  
any reference to your producing it, Mr. Pelzer. As  
you produced papers it was noted on the record, you  
know.

A. Yes, sir.

Mr. GROSVENOR: However, I will look it up.

2           By Mr. GROSVENOR:

Q. Who succeeded Mr. Scull as Vice-President? A. I don't  
know.

Q. When did you cease being Secretary of the Patents  
Company? A. My resignation went in on the 19th of Feb-  
ruary.

Q. When was it accepted? A. I received a letter, I have  
forgotten the date, but I think the letter is dated the 24th.

Q. Well, that is all now, Mr. Pelzer. A. All right.

3

Thereupon, WILLIAM DEVERY, the next witness sub-  
poenaed by Petitioner, of lawful age, duly sworn, deposed:

Direct examination by Mr. GROSVENOR:

Q. Mr. Devery, have you ever been engaged in the mo-  
tion picture business? A. I have.

Q. How many years have you been so engaged? A.  
Twelve.

4           Q. In what lines of the business? A. First, as an ex-  
hibitor; then as an exchange man; and also in a small degree  
as a manufacturer.

Q. When were you an exhibitor? A. From 1902 until  
1906.

Q. During what years have you been a rental exchange  
man? A. We started in the rental business in 1906.

Q. Doing business under what name? A. Imperial  
Amusement Moving Picture Company.

Q. Was that subsequently incorporated under another  
name? A. That was a copartnership, up to March, 1908,  
and then it was incorporated, and the Imperial Amusement



Moving Picture Company transferred its assets, etc., and incorporated under the name of Imperial Film Exchange. 1

Q. A New York corporation? A. A New York corporation.

Q. You may state whether that Imperial Film Exchange had several branch offices. A. Yes, it did, one at Washington, and one at Troy, New York.

Q. And your principal office was in New York City? A. At 44 West 28th Street.

Q. Was the Imperial Film Exchange, in the year 1908, a member of the Film Service Association? A. From March, 1908. 2

Q. In the year 1907, what manufacturers were you buying films from? A. We bought from all that were in the business at that time; there were not very many.

Q. While you were a member of the Film Service Association in the year 1908, from what manufacturers did you buy? A. We bought from all but the Biograph and the Kleine Optical Company.

Q. In the rental exchange business, the business in films is the most important part of the business, isn't it? A. It is.

Q. What proportion of the business consists of the business in films? A. Why the film is the principal part of the business. 3

Q. In January, 1909, were you present at any meeting of the Rental Exchanges in the Imperial Hotel in New York City? A. Yes, sir, I was.

Q. About how many rental exchanges were present at that meeting, or represented? A. I should judge there were about in the neighborhood of seventy or eighty, anyway.

Q. Do you recall seeing the printed forms of license exchange agreements? A. I do.

Q. At that meeting? A. I do; that is the day we received them. 4

Q. Had you seen them before that meeting? A. Did not.

Q. Were you present while there was discussion in regard to these agreements? A. I was.

Q. Do you remember whether anyone read the agreement? A. I believe Mr. Swanson read the agreement.

Q. Were speeches made in regard to it? A. There was a general protest.

Q. You may state whether or not a committee was ap-

1 pointed to see the manufacturers? A. There was a committee appointed.

Q. Did you subsequently sign the agreement? A. We did.

Q. Was there any adequate supply of films in the United States at that time existing outside of the source of supply from the so-called licensed manufacturers? A. Not at that time.

2 Q. During the year 1909, and up to April, 1910, you may state whether or not these three branches of your company, located at New York, Troy and Washington, D. C., conducted a rental exchange business as licensed exchanges of the Motion Picture Patents Company? A. Yes.

Q. In the Spring of 1910, giving it approximately, about how many customers did you have at each of these different branches? A. You mean altogether.

Q. Well, take the branches separately, for instance, at New York City how many, approximately, did you have on your books? A. About one hundred.

Q. And in Troy? A. We had about sixtyfive in Troy.

Q. And in Washington? A. About forty.

3 Q. Was your exchange one of the largest doing business in New York City? A. In New York City it was the largest, I believe.

Q. Were you doing a profitable business? A. Yes, very.

Q. About how many thousand dollars' worth of films were you taking a week at that time in your New York place? A. In the Spring we were buying about—in the New York office, you mean?

Q. Taking all of your offices? A. Fifty-six reels.

Q. A week? A. Yes, sir.

Q. And what did that amount to in dollars and cents?

4 A. Close on to six thousand dollars.

Q. Name some of the principal theatres who were on your books. A. S. Z. Poli.

Q. By that you mean all of Poli's circuit of theatres? A. Throughout Connecticut. We didn't have his place in Scranton.

Q. Were these films shipped from your office in New York up to Connecticut? A. No, Poli's circuit was furnished from the Troy office.

Q. From Troy, New York? A. Yes, sir.

Q. Did you furnish some of your customers located outside of the State of New York from your New York office? A. Some, yes.

Q. When did you first hear that the manufacturers in the year 1910 were going to start a rental exchange business in the name of the General Film Company, or under some other name?

Mr. KINGSLEY: I object to that because it has not appeared from the witness' testimony that he has ever heard of any such thing.

Mr. GROSVENOR: Perhaps it is a little leading, and I will change that. At what time, if at any time, during the early part of 1910 did you hear that the manufacturers were going to start a rental exchange business in the name of the General Film Company, or under some other name?

Mr. KINGSLEY: I object to that as leading and suggestive.

The Witness: February, 1910.

By Mr. GROSVENOR:

Q. What was the source of the information? A. I seen it in the Moving Picture World, an account of it.

Q. Is that a trade paper? A. It is a trade paper.

Q. Now, during the years 1909 and 1910, up to April, 1910, had your company, to the best of its ability, lived up to the requirements of the exchange license agreement? A. We did.

Q. Had all your offices? A. They had.

Q. During that period had any complaints been made to you that your company was violating the terms of the license agreement? A. There was in March.

Q. March when? A. March, 1910.

Q. You may state whether any complaints had been made to you before March, 1910? A. There were some complaints made about the Troy office.

Q. Now, who complained to you in March, 1910? A. The Patents Company.

Q. Who of the Patents Company? A. Motion Picture Patents Company.



1 Q. Who of that company, if anyone? A. As I understand it, all the manufacturers.

Mr. KINGSLEY: I object to that and move to strike it out as a conclusion of the witness.

By Mr. GROSVENOR:

Q. What individual made the complaint? A. Mr. Kennedy.

2 Q. And where? A. Where did he make it?

Q. Yes, where did he make the complaint to you? A. That complaint was written and sent in, and then previous to that there was a complaint made by Mr. Kennedy; he called personally at the office and claimed that he found one of our reels at the New York Roof Garden, a Biograph reel.

Q. Was the New York Roof Garden a licensed exhibitor? A. I don't think so.

Q. Well, was your film up there? A. It was not.

3 Q. Then what was done afterwards, state briefly what the circumstances were? A. Mr. Kennedy called at the office, it was on a Saturday, and he told Mr. Steiner, the President, that we were furnishing unlicensed houses, and Mr. Steiner told him he never furnished an unlicensed house while in business or after he signed the agreement or contract.

Mr. KINGSLEY: I object to that unless the conversation was in the presence of the witness.

The Witness: He said he found one of the reels—

4 Mr. KINGSLEY: I object to that—

The Witness: Mr. Steiner told him he didn't find any of our reels at the New York Roof Garden, and then he asked Mr. Steiner to produce the four reels that we bought of the Biograph Company, that the Imperial bought. Mr. Steiner only could produce three and he told him he would furnish him the other one within two weeks. Mr. Kennedy felt indignant, and told Mr. Steiner he had a bunch of crooks working for him, and that they were taking the film out

and renting it to unlicensed houses, and then Mr. Steiner told him that he was wrong, and he produced a book and showed him where the reel was sent to Porto Rico, and on the 11th of March we received notice from the Patents Company that for furnishing film to an exhibitor in Porto Rico, without reporting same to the Patents Company, we were obliged to pay a fine of \$100, and to pay all back royalties from February, the inception of the Patents Company.

Q. You mean the exhibitor's royalty of \$2.00 per week?

A. Yes, up to the date of the notification, amounting to about \$222.

Q. Now you may state whether your company paid that fine, or any part of it? A. We paid fifty dollars of the fine, and then we were cancelled.

Q. State when you received the cancellation notice from the Patents Company. A. On April 15, 1910.

Q. Was that cancellation effective at once, or effective at the end of two weeks? A. Immediately, we were cut off.

Q. Did that cancellation apply to your New York office only, or to all three branches? A. To all.

Q. You may state whether or not your customers were notified of this cancellation? A. Every one of them, every one of the exchanges in New York, together with a list of every customer that was on our books.

Q. What efforts did you make, if any, to retain your customers? A. I told them to stay where they were, and I would protect them, which I did; all of them remained and I paid their royalties.

Q. You mean the two dollars per week exhibitor's royalty? A. Yes, sir. Just the same as if I was working under a license, and the Patents Company received it.

Q. How often did you pay them? A. Every week.

Q. And for how long? A. Why, until the receiver was appointed.

Q. Now, you say you received this notice of cancellation on April 15th? A. Yes.

Q. On what day of the week did you pay this amount for the exhibitor's royalties; that is, the royalties which had to be paid by your customers? A. It was customary to pay every Wednesday, because we had to get our report from Troy, and everything was paid from the New York office.

1 Q. And then you paid on Wednesday of the following week, and then did you the week after that? A. Yes, sir.

Q. And then what happened? A. Then what happened? Huh, the receiver came in and took possession of the business.

Q. You may state whether or not any of the manufacturers with whom you had been doing business made application to put you, or your company, into involuntary bankruptcy? A. There were three.

2 Q. What companies were they? A. Kalem Company, Vitagraph Company and Pathe Freres.

Q. And was it then that this receiver, whom you have referred to, came into your office? A. On the 26th of April.

Q. And took charge? A. Yes, sir.

Q. Did you contest this application for involuntary bankruptcy? A. We did.

3 Q. Did the companies who were trying to put you into bankruptcy introduce testimony in the case? A. They all did, every manufacturer connected with the Patents Company gave testimony.

Q. And after they had given testimony, you may state what the decision of the Referee was. A. Why, he dismissed it.

Q. Did he dismiss it before you put in any testimony? A. We didn't put in any defense.

Q. Dismissed it on their case? A. Yes, sir.

Q. Do you know whether or not an appeal was then taken by them from this decision of the Referee in Bankruptcy? A. There was.

4 Q. What was the decision on that appeal? A. Sustained.

Q. How long was it that your office was in the possession of this receiver? A. Two months.

Q. When the receiver got out, how many of your accounts were left? A. There were two hundred and fifty dollars on the books.

Q. Before the cancellation of your license in March, or at the end of March, 1910, you were doing how much business? A. A business of \$8,000 per week.

Q. In the rental exchange business, is it absolutely necessary that a rental exchange have a constant and steady



supply of film to furnish to its exhibitors? A. Positively. 1

Q. If the source of supply to the rental exchange is cut off a week, what happens to the business. A. Why, the customers gradually drop off, because they have what they call "runs," they are the first day's releases, known as first runs, and second runs, and so on, and you charge accordingly. The rates laid down by the Film Renters' Association at that time were for the first reels, first-day release; we had to charge \$15 per day.

Q. Were any efforts being made during this period with respect to which you have testified, to get the business of your customers? Answer only if you know. A. I know 2 that the Patents Company sent around agents to every customer we had, telling them that our license was cancelled and that we were hopelessly bankrupt; that was the statement that they made to several of the exhibitors; that we never would be able to resume business again, and that the best thing that they could do would be to get service from some other exchange.

Mr. KINGSLEY: I move to strike that out as being hearsay, incompetent and irrelevant, and not binding 3 on the defendants.

The Witness: It is not hearsay, it is a fact.

By Mr. GROSVENOR:

Q. As I understand your testimony, before this application for involuntary bankruptcy was made, after the cancellation of your license, you were trying to hold on to your customers by paying these exhibitors' royalties? A. Yes, sir.

Q. After you got back to your office with the two hundred and fifty dollars of accounts left, you may state whether or not you regained possession of some reels of films, which were 4 in your office? A. I don't understand that question.

Q. After you got back to your office with the \$250.00 of accounts left, you may state whether or not you found some reels of film which were in your office? A. Oh, yes.

Q. There were some in Washington? A. Yes, some in Troy, and some in Washington—no, I will state that as far as Washington was concerned, we made the agreement with Mr. Moore, of Washington, to take over the Washington office.

1 Q. Well, you need not go into that. There were some reels in the New York office? A. Yes, sir, and Troy.

Q. And some in the Troy office? A. Yes, sir.

Q. Now state whether or not any manufacturers instituted further suits against your company? A. They all instituted suits.

Q. Of what character? A. Replevin actions on rental accounts.

Q. How many suits did they bring? A. About twenty-four.

2 Q. Name the manufacturers who brought those suits? A. Pathe, Vitagraph, Kalem, Lubin, Selig, Essanay, Biograph, Kleine and Edison, nine, I believe.

Q. What effect did this cancellation and the subsequent litigation have upon your business? A. Drove us out.

Q. Did you make any effort to start in as an independent exchange, that is, handling the independent films? A. Not with the Imperial; we did not get a chance.

Q. Why not? A. Because they kept cleaning us out right along with lawsuits, and everything else.

3 Mr. KINGSLEY: I move to strike out the expression "and everything else."

Mr. GROSVENOR: I offer in evidence a copy of the report of John J. Townsend, Referee in Bankruptcy, in the action referred to by the witness, the report being dated June 20th, 1910.

Mr. KINGSLEY: We object to it as incompetent, irrelevant and immaterial, and not binding upon the defendants so far as the matters in controversy in this case are concerned.

4 Mr. GROSVENOR: You don't have any objection on the ground it is not a certified copy?

Mr. KINGSLEY: No.

Mr. GROSVENOR: Then I offer it, and ask that it be marked and placed in the record.

The paper referred to is marked "Petitioner's Exhibit No. 157," and is as follows:

**Petitioner's Exhibit No. 157.**

1

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In Bankruptcy.

In the Matter	No. 13573.
of	Report of Special Master under Order of Reference dated May 5, 1910.
IMPERIAL FILM EXCHANGE, Alleged Bankrupt.	

2

To the Honorable Judges of the United States District Court,  
for the Southern District of New York. In Bankruptcy.

I, John J. Townsend, Referee in Bankruptcy, do report as follows, under the Order of Reference herein made May 5th, 1910, ordering me as Special Master to take proof and testimony on the issues raised by the petition in bankruptcy filed April 26th, 1910, and the answer thereto.

3

In substance, the answer is a general denial of the allegations of the petition.

The petition after alleging that the petitioners are creditors of the respondent, in the aggregate, in excess of \$500, alleges, first, in Article VI unspecified preferential payments within Subdivision 2 of Section 3a of the Act, and secondly, in Article VII, acts of the respondent sounding in concealment or removal of property within Subd. (1) of Section 3a, although the pleader appears also to have had in mind the language of Subd. (2).

4

After offering the testimony contained in the accompanying stenographer's minutes (pp. 1-414), the petitioning creditors rested; and a motion was made by the respondent to dismiss the petition, on the grounds: first, that the petitioners have failed to show provable claims within the statute; second, that the petitioners have failed to establish any acts on the part of the respondent, within Subd. (1) of Section 3a; third, that the petitioners have failed to establish any acts of the respondent within Subd. (2) of Section 3a, or insolvency of the respondent at the time of the acts complained of, the



- 1 burden of proving insolvency being upon the petitioners in respect to such acts, pursuant to the statute (Section 3d), the books, papers, and accounts having been brought into Court from the custody of the Receiver (S. M., p. 406).

The respondent is a corporation known as The Imperial Film Exchange, carrying on the business of leasing films for moving pictures to exhibitors in New York, its suburbs, and elsewhere.

The respondent had an office in Troy, New York, where the same kind of business was carried on by it.

- 2 The respondent also had an agency in Washington. The business of this agency was on a different basis from the Troy office. The Washington agency was carried on by a man called Thomas Moore, who paid a large percentage of his receipts to the New York office of the Imperial Film Exchange. He also paid his own expenses.

The petitioning creditors are three of the so-called licensed manufacturers or importers mentioned in the printed Exchange License Agreement, which is an important factor in this controversy (Petitioner's Exhibit 3 of May 10, 1910, S. M., p. 13).

- 3 This Exchange License Agreement is made between the Motion Picture Patents Company of New York City and the respondent. In substance, it licenses the so-called Exchange to hire films from the so-called licensed manufacturers of importers, reserving to the latter specified rentals on the films based on a period of seven months' possession of the films by the Exchange (Condition No. 9).

Conditions Nos. 10, 11 and 12, in substance provide that the Exchange may sub-lease the films leased from the so-called licensed manufacturers or importers, but only to customers or exhibitors approved or licensed by the Motion Picture Patents Company.

- 4 Condition No. 14 makes the rentals due from the Exchange to the so-called licensed manufacturers or importers, payable in advance on each Monday for all films received during the preceding week. A clause at the end of the Agreement provides that the Exchange is entitled to a 10 per cent. rebate on these rentals, the rebate being payable in the first fortnight of each of the months of March, May, July, September, November, and January, on all films leased during the two months preceding such fortnight, pro-

vided all the terms and conditions of the License Agreement have been kept. 1

Condition No. 19 gives to the Motion Picture Patents Co. a right, without assigning any cause, to terminate the license of the Exchange on 14 days' written notice, and also to terminate the license immediately for cause.

Condition No. 19 also provides that when the license is terminated for cause, all films shall be returned to the licensed manufacturers or importers within 20 days; but there is nothing in Condition No. 19 shortening the seven months' period of possession under Condition No. 9, where the license is terminated without cause assigned. 2

The provisions of the Agreement are drawn with great care and detail for the protection of the Motion Picture Patents Co. and require serious study.

It is to be noted that the so-called licensed manufacturers or importers are not parties to the Agreement, but the Agreement contains conditions for their benefit, viz.: the rentals to be paid to them by the Exchange for the films manufactured by them and leased by them to the Exchange under orders received from the Exchange. (See Conditions Nos. 9, 13 and 14), which orders each month are not to be less in the aggregate than \$2500. 3

I am satisfied by the evidence, that the so-called licensed manufacturers or importers are in interest with the Motion Picture Patents Co., though independent persons or corporations so far as contract rights are concerned. (Anderson, p. 42; Philips, p. 107; Bruenner, p. 121; Smith, p. 360).

On Friday, April 15, 1910 (the day of the week is important in connection with fixing the amount of the claims of the petitioning creditors under Condition No. 14), the Motion Picture Patents Co. notified the respondent Exchange in writing (Respondent's Ex. 2 of May 18, 1910, S. M., p. 182), that its license was cancelled by the Motion Picture Patents Co., the cancellation to take effect immediately. The notice stated the cancellation was because of violation, in that the Exchange had supplied film to exhibitors whose license fees had not been paid to the Motion Pictures Patents Co. (see Condition No. 12), and because the Exchange had allowed film to be disposed of otherwise than to licensed exhibitors (see again Condition No. 12). 4

1 I recall no testimony in substantiation of the causes so assigned for termination of the license.

On the same day, after receiving such notice, the respondent Exchange wrote to the Motion Picture Patents Co., without referring to the assigned causes (Petitioners' Ex. 17 of May 18, 1910, S. M., p. 174), to the effect that it withdrew as licensee of the Motion Picture Patents Co. and surrendered any and all licenses.

2 On the same day, Pathe Freres (one of the petitioning creditors, and also a licensed manufacturer, whose claim is for the rentals of films leased between April 4 and April 15), wrote to the respondent Exchange (Respondent's Ex. 2 of May 10, 1910, S. M., p. 22), stating that, having been notified by the Motion Picture Patents Co. of the termination of the license of the respondent Exchange, they had cancelled the standing order of the Exchange.

3 On the next day, the Kleine Optical Co. (one of the licensed manufacturers, but not a petitioning creditor), wrote to one of the customers or exhibitors of the respondent Exchange (Respondent's Ex. 3 of May 25, 1910, S. M., p. 258), stating that the license of the respondent Exchange had been cancelled and soliciting the business of the customer.

Similar letters were sent by the Kleine Optical Co. to other customers of the respondent Exchange, the names being furnished by the Motion Picture Patents Co. (p. 257), which presumably had such a list, through the operation of Condition No. 12 of the Exchange License Agreement (Petitioners' Ex. 3 of May 10, 1910, S. M., p. 13).

4 It is manifest that a termination of the license of the respondent Exchange by the Motion Picture Patents Co., under the circumstances stated, must necessarily have put a speedy end to the business of the Exchange with its customers, the exhibitors; and likewise it is clear that the termination of the license when noised abroad among these customers or exhibitors, who themselves were in fact licensees of the Motion Picture Patents Co., would substantially hamper the collection by the Exchange of the accounts due to it from them, whereas had the Exchange been allowed to continue as a going concern, these accounts might very well have been collected by it.

This would be true, even if no petition in bankruptcy, with its incidental Receivership, had followed; and more



true after the filing of such a petition. This consideration must be kept in mind by the Court in appraising the property of the respondent Exchange at its "fair valuation" (§1a (15) ), when called upon to decide whether or not the respondent Exchange was insolvent at the time of the acts complained of by the petitioning creditors within Subd. (2) of §3a. As stated *supra*, the burden of proof on this question is with the petitioning creditors.

On April 26th, in the situation created by the termination of the license on April 15th by the Motion Picture Patents Co., three of the latter's licensed manufacturers or importers, to wit: Pathe Freres, the Vitagraph Co. of America, and the Kalem Co., filed the present petition of bankruptcy against the respondent Exchange, containing the allegations before referred to *supra*, and the Receiver was appointed.

As the bulk of the testimony adduced by the petitioning creditors was offered to establish affirmatively the insolvency of the respondent Exchange at the time of the commission by its acts complained of within Subd. (2) of §3a, it is convenient first to report my conclusion on that issue.

On a motion of the present character, analogous to a motion by a defendant for a non-suit upon the plaintiff's proof, the petitioning creditors are entitled to all the inferences arising on the testimony which can reasonably be drawn in their favor. This is the familiar rule on such a motion.

I find that the liabilities of the respondent Exchange inclusive of the claims of the three petitioning creditors which aggregated at that date \$5,214.16 (see Petitioner's Ex. 1, p. 5; Ex. 2, pp. 12, 13; and Ex. 4, p. 37), were \$13,700. Substantially nine-tenths of such indebtedness represented claims for rentals by licensed manufacturers or importers of the Motion Picture Patents Co.

I am asked to find and so find that such indebtedness of \$13,700 is increased by about \$2,000 balance of salary due William Steiner, the President of the Exchange, his salary for 2 years and 1 month being about \$5,200 and he having drawn \$3,300, *infra*, page 11.

I decline to find such indebtedness increased by any balance of salary due to William Devery as Secretary and Treasurer (p. 414), see *infra*, page 12.

For present purposes, I have found the aggregate of the claims of the three petitioning creditors as above stated, without an analysis of the Petitioners' Exhibits 1, 2 and 4,

1 in connection with Condition No. 14 of the Exchange License Agreement (Petitioners' Ex. 3, S. M., p. 13).

I will state for convenience, if such analysis becomes material, that the Monday next after the termination of the license fell on April 18th, that Monday next before the date of the termination of the license fell on April 11th, and the next prior Monday fell on April 4th.

2 The deliveries of films, the rentals of which, payable in advance under Condition No. 14, form the basis of the petitioning creditors' claims, were made, I understand, in the first fortnight of April and almost entirely prior to the date of the termination of the license on Friday, April 15th.

3 As a matter of law, I find that these rentals, claimed by the petitioning creditors, were payable in advance and were not cut off by the fact that the Motion Picture Patents Co. terminated the license on April 15th under Condition No. 19. I hold this termination did not affect the rentals payable to the licensed manufacturer by the Exchange at that date. In this connection, I may add that I find, in view of the letters exchanged by the Motion Picture Patents Co. and the respondent Exchange (*supra*, p. 4), and the absence of any proof of the cause assigned for terminating the license, that the original period of possession of the films to which the Exchange was entitled under Condition No. 9, was not curtailed by the termination of the license, nor was the Exchange deprived of any rebates to which it was then entitled to receive from the licensed manufacturer if these were otherwise due as is claimed of the Exchange. These rebates formed part of the New York accounts receivable on April 26, 1910 (*infra*, p. 9).

4 It will be noted by reference to the rebate clause of the Exchange License Agreement, that the rebates to which the Exchange claims it was entitled on April 26th must have accrued on bills for rentals rendered prior to March 1, 1910. As I understand, the claims of the petitioning creditors (Exhibits 1, 2 and 4), and the claims of the other licensed manufacturers against the Exchange, are all substantially for rentals payable on Mondays subsequent to March 15th and more particularly on the two Mondays next preceding Friday, April 15th, the date of the termination of the license by the Motion Picture Patents Co.

I find that the nominal assets of the Exchange on hand April 26th to meet its liabilities were as follows, the figures

being revised by me, but being substantially as submitted to me on the oral argument:

Cash on hand, New York City.....	\$1,235.00	
Cash on hand, Troy, N. Y.....	1,900.00	
Cash on hand, Troy, N. Y.....	385.00	
Accounts receivable, New York.....	6,712.83	
Accounts receivable, Troy, N. Y.....	2,221.00	
Accounts receivable, Troy, N. Y.....	521.85	
Accounts receivable, Troy, N. Y. (regarded as doubtful by the Exchange).....	2,352.33	
New York fixtures .....	200.00	2
Note of George Geanease, a Coney Island Ex- hibitor, .....	1,000.00	
Thomas Moore, Washington Agency, <i>supra</i> , p.	3,000.00	
	<hr/>	
	\$19,528.01	

(See Petitioners' Exhibit 7, p. 66; S. M. Crocker, pp. 59, 61, 71, 66, 64, 67, 199, 401-4.)

It will be noted that in the foregoing list of nominal assets, there is no mention of films. I have purposely omitted any reference to films. The evidence does not satisfy me what, if any, films the respondent Exchange owned on April 26th, as distinguished from films in its possession on that date under lease from the licensed manufacturers or importers. (Receiver Crocker, S. M., pp. 75, 79, 203, 403; Devery, p. 381.) For this reason, I do not consider the testimony adduced by the petitioning creditors to the effect that such films have little or any value except as junk.

I must decline to find that the nominal assets of the respondent, taken at a fair valuation, were not on April 26, 1910 (the date when the petition was filed) or at any time during the period of twelve days preceding April 26th, sufficient in amount to pay the debts of the respondent.

I reach this conclusion, after deducting from the nominal assets the amount of the Troy accounts receivable, regarded as doubtful by the respondent, to wit: \$2,352.33 and consider the nominal net assets at \$17,175.68.

The respondent is entitled to have its assets valued as if no petition in bankruptcy had been filed and no Receiver



- 1 appointed, and I have so considered them in reaching this conclusion.

The only proof offered to show that the nominal assets were not sufficient in amount to pay the respondent's debts, is the testimony of the Receiver, Crocker, examined from time to time (pp. 56-80; 184-225; 395-406), and that of his agent (Praden, pp. 226-244), stating his efforts to collect and the results of his collections. (Crocker, pp. 401-2, 61-65, 71-73, 185, 199, 203-207, 210, 216, 219, 396, 400, 403, 404.)

- 2 Apparently the Receiver's collections, so far, less the New York cash and his gross receipts from operating the business, amounted to \$4,114.67 (pp. 401-3). Obviously, he could not collect the rebates even if good.

I do not think that his testimony, taken as a whole, under the circumstances that a petition in bankruptcy had been filed against the respondent, and that the respondent was *de facto* no longer a going concern able to supply its customers with new films and thus preserve their good will, is sufficient, most favorably considered for the petitioners to establish the proposition contended for by them.

- 3 Although on this issue, in respect to which the burden of proof is upon the petitioning creditors, I have declined to find that the respondent was insolvent at the time of the acts complained of by the petitioning creditors within Subd. (2) of §3-a, I deem it my duty to report not only as to those acts, but as to the acts complained of by the petitioning creditors under Subd. (1) of §3-a.

- 4 The payments to William Steiner, the President of the respondent, and to William Devery, as Treasurer, hereafter referred to, were complained of by the petitioning creditors on the argument of the present motion solely under Subd. (1) of §3-a.

I have since been asked by the petitioning creditors to find that if these payments were not acts within Subd. (1), they were acts within Subd. (2) of the same Section.

In the consideration to be given to these acts, whether claimed to fall within Subd. (1) or Subd. (2), the petitioning creditors are entitled on the evidence to have it found, and I so find, that prior to April 15, 1910, when the notice of termination of license was given by the Motion Picture Patents Co., William Steiner, the President of the respondent, was contemplating establishing himself in busi-

ness as an independent Exchange, dealing with independent manufacturers of film, and that thereafter and at the time of filing the petition, he had, to some extent, established himself in business as an independent Exchange, openly occupying the premises 110 Fourth Avenue, of which a lease had been taken by the respondent, its place of business at 44 West 28th Street being about to be torn down, and having in his possession at 110 Fourth Avenue for his own account a few picture machines belonging to the respondent Exchange and some films either owned or leased by the respondent Exchange. There was no attempt to conceal these matters from the Receiver, nor the fact that some of the customers of the respondent had gone with William Steiner in his new business. (Concession, p. 177; Devery, pp. 382, 384, 385; Crocker, pp. 186, 191, 405; Charles Henkel, p. 367.

The petitioning creditors are also entitled to a finding, and I so find, that at the time of the acts complained of, William Devery, the Treasurer, contemplated buying out the interest of William Steiner in the respondent Exchange, and moving the respondent Exchange to new quarters on Sixth Avenue (Crocker, p. 405; Devery, p. 384).

I will first consider the payments for which William Steiner is responsible:

Petitioners' Exhibit 12, check No. 2734, is a check dated April 18, 1910, to the order of William Swanson for \$300.

Petitioners' Exhibit 13, check No. 2736, is a check dated April 19, 1910, payable to Alfred Weiss for \$1,500.

Petitioners' Exhibit 9, check No. 2738, is a check dated April 20, 1910, payable to bearer for \$1,500, endorsed by William Steiner (Dunkley, pp. 83-85).

These checks aggregating \$3,300, were so drawn by the direction of Steiner (Hurst, p. 153).

In the stubs of the check book as taken possession of by the Receiver, all of the foregoing checks are entered as payments of salary to William Steiner. The stubs, some or all, show erasures. Devery, the Treasurer, testified (p. 385) in explanation of these erasures, that Steiner had a way when he was in need of any money to tell Hurst, the bookkeeper to make the check so and so, but that when he (Devery) came to look over the check book, he directed the bookkeeper to make the entry in the stub so that the payment should be put to the proper account, which was

1 Steiner's salary account, and that he did not know Steiner's reasons for having the checks made to bearer or third parties.

The payments to William Devery, the Secretary and Treasurer, aggregating \$2,300, are represented by Petitioners' Exhibit 14, check No. 2731, dated April 15, 1910, payable to William Devery for \$1,800, and Petitioner's Exhibit 10, check No. 2747, dated April 26, 1910, to the order of bearer for \$500, endorsed "Jos. Koster. O. K., Wm. Devery" (pp. 85, 86).

2 In corresponding stubs, these payments are entered as made on account of the salary of William Devery (Hurst, the bookkeeper, p. 151).

Hurst testified (p. 147) that the salary of Steiner and Devery was at the rate of \$50 a week each, and the minutes of the respondent Exchange, which had been doing business since March, 1908, a period of two years and one month before the filing of the petition in bankruptcy, show (Devery, p. 410) that the salary of each was originally fixed at \$2,600 a year, by the three persons, Devery, William Steiner and his brother Otto, who were the only parties connected with the Company (p. 411).

3 Apparently since March, 1908, neither Steiner nor Devery had drawn any money for salary until these drawings. Incidentally, it may be noted that Devery's drawing of \$1,800 was for the purpose of buying out Steiner's interest (Devery, p. 413), and he states (p. 414) that he makes no claim for the rest of his salary.

4 It will be noted that the moneys drawn appear in the stubs as salary, which was on the proof *prima facie* then due to Steiner and to Devery. There is therefore this record of the payments and there is no suppression of the checks. It is also to be noted that the checks in date are drawn on and after April 15, 1910, the date when the license of the respondent Exchange was terminated by the Motion Picture Patents Co.

On the foregoing evidence, I shall find that the payments represented payments of salary due to Steiner and to Devery, and that the subsequent disposition by them of the funds drawn is immaterial.

I decline on the evidence to find that the drawings so appearing in the stubs and checks and made under the circumstances referred to, constituted acts within Subd. (1) of §3a.



It remains to be considered whether the payments just mentioned, as well as certain other payments established by the evidence, fall within Subd. (2) of that Section.

These additional payments are shown by the checks and the stubs of the check book.

Petitioners' Exhibit 11, check No. 2739 (p. 85) is a check dated April 20, 1910, paid to Frank Noel for \$507.14. Noel was the Manager of the Troy office and the payment was made for commissions and salary for two weeks on his leaving the employ of the Exchange to get married. Apparently the stub followed the check (Hurst, p. 151; Devery, p. 393).

There is a payment of \$100 to David Graham Butler on April 26, 1910 for legal services. It will be noted that this is the day that the petition was filed against the respondent Exchange by the licensed manufacturers as petitioning creditors.

There is a payment of \$31.75 to one Meyer on April 25, 1910, for "supply account."

There is a payment of \$75 to one Dawson for rent at Tarrytown on April 14, 1910.

These three payments I cannot find in the minutes, but as I recollect appear on stubs of checks or in a cash book.

There is no evidence to show that these four payments to Noel, Butler, Meyer and Dawson were for any other than a present consideration, and I decline to find that either of them or the payment to Noel were made with intent to prefer the payees, even if it should be held that the respondent was insolvent at the time these four payments were made.

I decline to find that the payments made by the respondent to Devery and to Steiner were made with intent to prefer them over other creditors, but I should hold that they were made with such intent if, as a matter of fact, the respondent was insolvent at the time that they were made, which fact I have refused to find.

I report accordingly on the whole case, that the prayer of the petition of the petitioning creditors filed April 26, 1910, should be denied on the evidence adduced by the petitioners.

It is evident to the Special Master that the controversy in this Court based on the claims of the petitioning creditors for rentals due to them as manufacturers or importers licensed by the Motion Picture Patents Co. is only a part of an earlier controversy between the Motion Picture Patents

- 1 Co. and its license, the respondent Exchange, of which this Court has no jurisdiction.

I ask that any order entered on this report may fix my fees as Special Master and direct by whom they should be paid, as well as the bill of my stenographer. Under District Rule XVI, in my opinion, this reference has been a difficult and extraordinary case, and I so certify as Special Master. However this may be, I have been occupied, as appears by the Referee's Record, nine days in taking the testimony and oral arguments. I have spent substantial portions of at least six days in the consideration of the testimony and the preparation of my report.

2

New York, June 20, 1910.

J. J. TOWNSEND,  
Referee in Bankruptcy,  
Acting as Special Master.

Mr. GROSVENOR: I introduce secondly, the order of the Hon. Charles M. Hough, United States District Judge, in the same action, referring to the Referee's report, being dated 28th day of June, 1910, and ask that it be marked as an exhibit and incorporated in the record.

3

Mr. KINGSLEY: I object to this paper as incompetent, immaterial, and irrelevant, and not applicable to the issues in this proceeding and not binding upon any of the defendants herein.

The paper referred to and offered by the Petitioner is marked "Petitioner's Exhibit No. 158," and is as follows:

4

**Petitioner's Exhibit No. 158.**

1

At a Special Term of the United States District Court, for the Southern District of New York, held in the Post Office Building, in the Borough of Manhattan, New York City, State and County of New York, on the 28th day of June, 1910.

Present—Honorable CHARLES M. HOUGH. United States District Judge.

2

In the Matter

of

The Petition of THE VITAGRAPH Co. of AMERICA, PATHE FRERES, and the KALEM Co., to have the IMPERIAL FILM EXCHANGE, a corporation, adjudged an involuntary bankrupt.

3

A petition in bankruptcy having been filed in this Court against the Imperial Film Exchange by The Vitagraph Co. of America, Pathe Freres and the Kalem Co., on the 26th day of April, 1910, and an application having been made on said petition, on the same day, by Vitagraph Company of America for the appointment of a Receiver of the assets and effects of said Imperial Film Exchange, and an order having been made and entered in this Court on the 26th day of April, 1910, appointing Frank L. Crocker, Receiver of the assets and effects of the Imperial Film Exchange, and the Imperial Film Exchange having interposed an answer to said petition in bankruptcy, denying all the acts of bankruptcy set forth in said petition and denying the allegations of insolvency, and the said petition and answer having been referred to the Honorable John J. Townsend, as Special Master, by order of this Court dated the 5th day of May, 1910, to take proof and report his findings on the issues raised by the said petition, and answer, and a trial of all the said issues having been duly had before the said Special Master, and said Special Mas-

4



1 ter having made and filed in this Court his findings and  
report upon the said issues so referred and tried before  
him; and said findings and report of said Special Master  
having been brought on for confirmation before this Court  
on the 22nd day of June, 1910, and after hearing Leo  
Oppenheimer, of counsel for the Imperial Film Exchange,  
in support of the confirmation of said report, and Leroy  
D. Ball, of counsel for the petitioning creditors, opposed  
to the confirmation of said report; now, upon all the  
papers and proceedings had herein, and upon notice of  
Messrs. Luce & Davis, attorneys for the Imperial Film  
2 Exchange, and after due deliberation, it is

Ordered, adjudged and decreed that the findings and  
report of the Honorable John J. Townsend, as Special  
Master, be, and they hereby are, in all respects, approved  
and confirmed; and it is further

Ordered, adjudged and decreed that the petition of  
The Vitagraph Company of America, Pathe Freres and  
the Kalem Co., filed in this Court on the 26th day of April,  
1910, to have the Imperial Film Exchange adjudged an  
involuntary bankrupt, be and the same hereby is dismissed;  
with costs to be taxed; and it is further

3 Ordered, adjudged and decreed that the order of this  
Court of April 26th, 1910, appointing Frank L. Crocker,  
Receiver of the assets and effects of the Imperial Film Ex-  
change, be, and the same hereby is, vacated and set aside,  
and said Frank L. Crocker is hereby empowered and di-  
rected to forthwith turn over to the Imperial Film Exchange  
all of the assets and effects of every kind, nature and  
description belonging to said corporation in his possession  
or under his control as such Receiver, without any reserva-  
tion or exception; and it is further

4 Ordered, adjudged and decreed that said Frank  
L. Crocker, as speedily as possible after service of a copy  
of this order upon him, file in this Court his account as  
such Receiver, and that he give notice of the filing of such  
accounts to the petitioning creditors herein and to the attor-  
neys for the Imperial Film Exchange, and that he further give  
notice to the petitioning creditors, or their attorneys, that  
he will move at a certain time and place, before this Court  
to have his fees and the expenses of his administration  
charged upon the said petitioning creditors or such of them

as moved for the appointment of a Receiver of the assets and effects of the Imperial Film Exchange.

C. M. HOUGH,  
United States District Judge.

By Mr. GROSVENOR:

Q. Was your company offered any opportunity for a hearing on that cancellation notice received by you about April 15, 1910? A. No.

Q. Were you offered any opportunity for a hearing on the question as to whether or not you had violated any of the terms of your agreement with the Patents Company? A. No.

Q. Did the Patents Company return these exhibitors' royalties which you say your company sent in to them those two weeks? A. They didn't but they wrote to Mr. Crocker, the Receiver, and wanted to know why he didn't pay the royalties.

Q. Who was Crocker? A. He was the Receiver, and Mr. Crocker asked me what they meant by "royalties," and I told him we had to pay two dollars per week for every exhibitor on the books.

Q. You said you had not had any trouble with the Patents Company prior to March, 1910, except that there was some complaint about your Troy office, or branch. What was that? A. Well, I believe from what—

Q. Was that in regard to your having violated any of the terms of the license agreement? A. No, the manufacturers thought we were not buying enough film.

Q. The Troy office was not? A. That all the offices up the State were not buying enough film.

Mr. KINGSLEY: I object to what the manufacturers may have thought as beyond the knowledge of the witness, and as being incompetent, immaterial and irrelevant.

By Mr. GROSVENOR:

Q. Just state what Mr. Kennedy said? A. Mr. Kennedy called all the up-State representatives to 80 Fifth Avenue, and told them they ought to.

1

Q. Were you present there? A. Yes.

Q. State what he said. A. He stated he thought they ought to organize a film renters' association up the State, similar to the one they had here in the City, and while the Patents Company could not give them any writing or protection, that the Patents Company would be back of them verbally, and anybody that did not live up to the regulations, the same as in the City, they would have their licenses cancelled.

2

Q. Was there such a film renters' association in this city? A. There was.

Q. And were the members of it licensed exchanges? A. All the exchanges.

3

Q. What was the rule regarding the transferring of customers from one rental exchange to another? A. If the Imperial Film Exchange took a customer that was on the books of any other exchange, of course other than the independents, which they could take on at any price—but the rules of the Film Renters' Association were that we had to find out the name of the exhibitor before we done any business with him, call up the exchange that was supplying him with service, to find out the amount he was buying, or whether he owed that concern any money—if he didn't owe the concern any money he was to charge twenty per cent. over the amount he was paying to that concern; that means if a customer is paying to Miles Brothers, for instance, thirty dollars per week, we would have to charge him thirty-six dollars for the same service.

Q. Did the rules of the license agreement under which the Imperial Exchange was operating prevent any two licensed exchanges from serving the same exhibitor? A. They did.

4

Q. And this rule which you have just described applied where an exhibitor left one exchange, and went to another? A. Yes, sir.

Q. Now you said they came down to your office when they started the replevin actions and took the films, is that right? A. Yes, sir.

Q. Were you present? A. Yes, sir, I was; they served the papers on me.

Q. Did any of the employees of the Patents Company come along? A. Yes, I believe Mr. Braden.



Q. What is his name? A. Braden.

Q. I mean his full name? A. I don't know his first name.

Q. Any of the others? A. That was all I recognized.

Q. Do you know Durant Church? A. Yes, sir, I do.

Q. Who is he? A. Why he is in the employ of the Motion Picture Patents Company.

At 3:45 o'clock P. M., on this March 1st, 1913, the hearing was adjourned until 10:30 o'clock A. M., March 17th, 1913, to be resumed at the Hotel McAlpin, New York City, or such other place as may be decided upon in the meantime.

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IN THE  
DISTRICT COURT OF THE UNITED STATES  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

<p style="text-align: center;">THE UNITED STATES OF AMERICA, Petitioner,</p> <p style="text-align: center;"><i>against</i></p> <p style="text-align: center;">MOTION PICTURE PATENTS Co., and others, Defendants.</p>	}	<p style="text-align: center;">No. 889.</p> <p style="text-align: center;">Sept. Sess., 1912.</p>
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Philadelphia, Pa., March 17th, 1913.

The hearing heretofore fixed for March 17th, 1913, upon application of Mr. George R. Willis, of counsel for Motion Picture Patents Company, and by consent of all counsel, was continued until June 2nd, 1913.

Knoxville, Tenn., June 2nd, 1913.

The hearing heretofore fixed for June 2nd, 1913, was upon application of Hon. Edwin P. Grosvenor, counsel for the Petitioner, United States, and by consent of all counsel, continued until June 24th, 1913.

1 Knoxville, Tenn., June 24th, 1913.

The hearing heretofore fixed for June 24th, 1913, was upon application of Petitioner's counsel, and by consent of all counsel, continued until July 7th, 1913, at 10.30 o'clock.

New York City, July 7th, 1913.

The hearing was resumed pursuant to adjournments, at 11:30 o'clock A. M., on this July 7th, 1913, at Room 47, Post Office Building.

2 Present, on behalf of the Petitioner, Hon. EDWIN P. GROSVENOR, Special Assistant to the Attorney-General.

JOSEPH R. DARLING, Esq., Special Agent.

Present also, Messrs. CHARLES F. KINGSLEY, GEORGE R. WILLIS and FRED R. WILLIAMS, appearing for Motion Picture Patents Company, Biograph Company, Jeremiah J. Kennedy, Harry N. Marvin, and Armat Moving Picture Company.

3 Mr. J. H. CALDWELL, appearing for William Pelzer, General Film Company, Thomas A. Edison, Inc., Kalem Company, Inc., Melies Manufacturing Company, Pathe Freres, Frank L. Dyer, Samuel Long, J. A. Berst and Gaston Melies.

Mr. HENRY MELVILLE, Attorney for George Kleine, Essanay Film Manufacturing Company, Selig Polyscope Company, George K. Spoor and W. N. Selig.

Mr. JAMES J. ALLEN, appearing for Vitagraph Company of America and Albert E. Smith.

4 Mr. DWIGHT MACDONALD, appearing for Mr. Rowland.

PETER ADAMS, a witness subpoenaed on behalf of the Petitioner, being first duly sworn by the Examiner, testified as follows:

Direct examination by Mr. GROSVENOR:

Q. Mr. Adams, will you state your full name and your residence? A. Residence is 319 Main Street.

Q. In what city? A. Paterson, New Jersey.

1

Q. In September, 1912, what was your business there?

A. I have a theatre.

Q. Is this theatre a theatre which exhibits and did exhibit at that time films of motion pictures? A. Yes, sir.

Q. You may state whether or not that theatre at that time was a theatre showing films made by the manufacturers licensed by the Motion Picture Patents Company? A. Yes, sir.

Q. What is the name of your theatre? A. The Paterson Show.

Q. You may state whether or not in September, 1912, your theatre contracted to show certain films of motion pictures which were not made by the Patents Company licensees. A. Yes, sir.

2

Q. And what were those films which you contracted to show in your theatre? A. It was an automobile race that was taking place in Indianapolis.

Q. Were the films of this automobile race in Indianapolis made by the Indianapolis Calcium Light & Film Company? A. Yes, sir.

Q. You may state whether or not anything was said to your theatre by the Patents Company in respect to the exhibition of those films. A. Yes, sir; we were called up, and they said if we do run those films on that day, our license will be taken away from us.

3

Q. And was that statement made over the telephone? A. Yes, sir.

Q. You may state whether or not subsequently the films of this automobile race were exhibited in your theatre as had been contracted to be done by your theatre? A. No, they were not exhibited.

Q. Your theatre, then, exhibits and has exhibited, only the films made by the Patents Company licensees? A. Yes, sir.

4

Cross examination by Mr. KINGSLEY:

Q. Mr. Adams, what kind of a projecting machine were you using in your theatre? A. Powers No. 6.

Q. Did you have a contract with the Patents Company respecting the kind of film that should be shown on this



1 projecting machine in your theatre? A. No, I never had contracted with them.

Q. Was there a license plate on the machine? A. That I could not tell you. I don't know very much about the machines.

Q. Was there a plate on this projecting machine? A. I could not tell you much about that, either. I could not tell you whether there was or not.

Q. You cannot tell us? A. No.

Q. But you do know that it was a Powers No. 6? A. Yes, sir.

2 Q. You had a license from the Patents Company, did you not? A. Yes, sir.

Redirect examination by Mr. GROSVENOR:

Q. How long has your theatre been in business? A. Well, I got this theatre now near four years myself, but the theatre had been there before.

Q. When did you buy this projecting machine, this Powers machine? A. Well, right after I bought the place. That was four years ago next October.

3

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WILLIAM J. ANDERSON, a witness subpoenaed on behalf of the petitioner, being first duly sworn, by the Examiner, testified as follows:

The Examiner: Where do you live?

The Witness: 2111 Orleans Street, Philadelphia, Pennsylvania.

4 Direct examination by Mr. GROSVENOR:

Q. Mr. Anderson, in June, 1910, were you engaged in the motion picture business in the City of Philadelphia? A. I was.

Q. Was your connection with the business that of exhibiting motion picture films? A. It was.

Q. Did you have a theatre? A. I did.

Q. You may state whether or not you also exhibited films at different places or so-called one-night stands? A. I did. I exhibited at churches, lodges and clubs.

Q. These one-night exhibitions by you of films, were in churches, lodges and clubs? A. Yes. 1

Q. Were you obtaining your films at the time I have named from the companies, so-called Motion Pictures Patents Company licensees? A. Some of them.

Q. Were you exhibiting also films which you had bought from various manufacturers prior to the formation of the Patents Company? A. I was.

Q. You may state whether or not those films which had been bought prior to the formation of the Patents Company had been bought in part or in whole from some of the companies which were licensed by the Patents Company? A. Quite a number of those films came from the Pathe Company direct. Some of them came from Edison through Swaab, Mr. Swaab being their agent at that time. 2

Q. Had these films, these Pathe films and Edison films, which you have just referred to, been purchased by you outright before the formation of the Patents Company? A. They were purchased outright.

Q. And before the formation of the Patents Company? A. Yes, sir.

Q. And they were some of the films which you were exhibiting in conjunction with the films you were obtaining in June, 1910, from rental exchanges licensed by the Patents Company? A. They were. 3

Q. You may state whether or not anything was done in June, 1910, by the Patents Company in regard to the cancellation of your license, and if so, what reason was stated. A. They sent me a notice that if we did not discontinue using the films that I had in my possession, in conjunction with theirs, that they would cancel the license, and of course we kept on using them just the same, and they cancelled it on June 24th, 1910. 4

Q. That is, you continued using these films which you had purchased outright, with the films you were getting from day to day? A. I did.

Q. What effect, if any, did that have upon your business? I mean the cancellation. A. Well, for that summer it almost put an end to the business, but afterwards, in September, they regranted the license, and we continued right on.

Q. When the license was regranted, did it permit you to exhibit these films in respect to which the dispute had

1 arisen? A. We were supposed to dispose of all the films that I had in my possession before they would give us that license.

Cross examination by Mr. KINGSLEY :

Q. Did you dispose of that film before you took the license? A. I did not.

Q. Did you tell the Patents Company that you had disposed of it? A. I did.

Q. But as a matter of fact, you still had possession of it? A. I sure did.

2 Q. What did you do with it? A. I simply used it in conjunction with the business, the same as I done before.

Q. After taking out the license in September, you continued using the film— A. (interrupting): I did not take out any license. They simply granted it. I never paid any license to them, because they received the license through the exchange.

Q. But after September 24th, you continued using your film as before? A. I sure did.

3 Q. Is it not true that a portion of that old film which you had in your possession and which you were exhibiting as you traveled from place to place, was not made by any of the Patents Company licensees? A. Well, they were not made at that time.

Q. Didn't you have so-called independent films in your possession at that time? A. I don't remember that.

Q. You don't remember that? A. No.

Q. You were the owner of the film, you say? A. I was the owner of the film, but whether or not I had bought any Independent film up to that time or not, I cannot remember.

4 Q. Did you buy Independent film after September 24th? A. I sure did.

Q. When did you buy this Pathe film? A. When did I buy Pathe film?

Q. Yes. A. When Pathe first began to sell film in this country.

Q. What year was that? A. About 10 years ago.

Q. You had some of this Pathe film that you bought ten years ago, at the time that the Patents Company wrote you? A. I sure had. I have got some of it yet.

Q. You say you had some of this Pathe film that you



bought ten years ago, at the time the Patents Company first wrote you? A. I did. 1

Q. Now, will you tell us the names of the makes of the film that you had at the time the Patents Company wrote you with respect to your exhibitions? A. Well, that is a hard matter to tell you. We had Gaumont.

Q. When did you buy the Gaumont? A. I don't know.

Q. Well, go ahead with the rest. A. I will tell you when we bought the Gaumont. I was with Welch, Wilskey & Anderson. We had a film exchange at Tenth Street and Spring Street, Philadelphia.

Q. About what time was that? A. That was, I should judge, about a year before this license was cancelled. I judge that. I don't know how long it has been. But at that time, we had bought in quite a number of films, and suddenly we were notified that no further film would be sold to us, and the result of it was that that combination went out of business and I bought all those films in that they had in their possession at that time. 2

Q. What other makes did you have besides Pathe and Gaumont? Old film, I mean. A. Edison.

Q. Yes. What else? A. I don't know. I forget what they are, but most of them are Gaumont, Pathe and Edison. 3

Q. Under what name did you run that exchange? A. Just what I told you, Welch, Wilskey & Anderson.

Q. And where was that located? A. Tenth and Spring, Philadelphia.

Q. Did your exchange have any other name except the firm name? A. None.

Q. Who owned the Philadelphia Film Exchange? A. Who owned the Philadelphia?

Q. Yes. A. I don't know. Lessy, I suppose.

Q. Who? A. Lessy. I suppose he owns it yet. 4

Q. What type of projecting machine did you use in your exhibitions? A. Powers.

Q. What number? A. Numbers 4, 5, and 6.

Q. Did you have three machines at the one time, or at various times? A. I have quite a number of machines.

Q. When did you buy these machines? A. I don't know.

Q. Roughly speaking. I don't ask for the exact date. A. I bought the No. 4 machines when Powers first made the No. 4 machines.

Q. And you used Nos. 4, 5 and 6 machines? A. Yes. I have used them all the time.

1 Redirect examination by Mr. GROSVENOR:

Q. Are these two letters which you received from the Motion Picture Patents Company at or about the time stated on the letters, namely, December 8th, 1910, and December 30th, 1910, in relation to the obtaining of a license (handing papers to witness)? A. (witness examining papers): That is correct.

2 Mr. GROSVENOR: Please copy those in the record. The letter of December 8th, 1910, identified by the witness, is marked Petitioner's Exhibit No. 159, and is as follows:

**Petitioner's Exhibit No. 159.**

MOTION PICTURE PATENTS COMPANY.  
80 Fifth Avenue, New York.

December 8th, 1910.

3 Mr. Wm. J. Anderson,  
2111 Orleans Street,  
Philadelphia, Pa.

Dear Sir:—

Replying to yours of December 2nd.

The Traveling Exhibitor's License which has been granted you entitles you to give exhibitions at seven different places during the week, provided that you exhibit in not more than one place each night.

If you exhibit in more than one place on a night it is necessary to pay royalty for each exhibition so given.

4 It is also necessary for you to furnish us a list of the places in which you give exhibitions.

We have asked Mr. Swaab for this list, but he informs us that you object to giving the information.

It is necessary that we have this information without delay, otherwise, we shall be forced to cancel your license.

Please give us a list of the places at which you exhibited on November 19th.

Yours truly,

MOTION PICTURE PATENTS COMPANY.

JB/SA.

By J. B.

The letter of December 30th, 1910, is marked 1  
Petitioner's Exhibit No. 160, and is as follows:

**Petitioner's Exhibit No. 160.**

**MOTION PICTURE PATENTS COMPANY.**

80 Fifth Avenue, New York.

Dec. 30, 1910

Mr. William J. Anderson,  
2111 E. Orleans St.,  
Philadelphia, Pa.

2

Dear Sir:

Confirming conversation of this date.

We will issue you a license to exhibit film on the following terms:

You are to obtain film from a licensed exchange only for such exhibitions as you desire to give, these exhibitions to be unlimited in number.

You are to pay us a royalty of fifty cents (50c.) per exhibition, your exhibitions to be limited to one day or one night exhibitions, unless you have permission from us for an exhibition of a longer period. This royalty is to be paid through the exchange that supplies your films and is to be forwarded to us by the Exchange.

3

In every case the Exchange must be notified by you of the exact time and location of the exhibition for which film is obtained, and the film is to be returned by you to the Exchange promptly after the exhibition.

Film obtained by you for one exhibition must not be transferred by you to another exhibition, except with the knowledge and permission of the Exchange; and when the second exhibition occurs on the evening or day following the first exhibition. You are not to have in your possession at any time any stock of film except in transit from the place of exhibition to the Exchange.

4

You are not to make use of any film except licensed film in any exhibition given or booked by you.



- 1 It is understood that this license is terminable by us at any time.

Yours truly,  
MOTION PICTURE PATENTS COMPANY  
By H. N. Marvin, V. P.

HNH/JK  
L.

- 
- 2 Recross examination by Mr. KINGSLEY:

Q. When was it you received the first letter regarding which you testified to on your direct examination? A. You mean the cancellation of the license?

Q. Yes. I mean the letter in which you state that the Patents Company notified you that you must dispose of all the films you had on hand. A. That was shortly before June 24th, 1910.

Q. Where is that letter now? A. It was torn up and thrown in the waste basket.

- 3 Q. When did you tear it up and throw it in the waste basket? A. At that time. That is what I thought about it.

Redirect examination by Mr. GROSVENOR:

Q. Mr. Anderson, with what rental exchange were you doing business in May and June, 1910? A. Swaab.

Q. The Swaab Film Service? A. The Swaab Film Service.

Q. Afterwards, in December, 1910, or September, 1910, when you began to do business again with the film manufacturers, with what rental exchange did you do business?

- 4 A. Swaab Film Service.

Q. Is this a letter which you received about the time stated on the letter? (Handing paper to witness.) A. (witness examining paper): It is.

Mr. GROSVENOR: I offer it in evidence.

The paper is marked Petitioner's Exhibit No. 167, and is as follows:

**Petitioner's Exhibit No. 167.**

1

GENERAL FILM COMPANY

Successors to

LUBIN FILM SERVICE CO.

926 Market Street, Philadelphia.

16th January, 1911.

Mr. Wm. J. Anderson,  
2111 E. Orleans, St.,  
Philadelphia, Pa.

2

Dear Sir:—

The Patents Co. have written us that they have made a proposition to you in reference to the manner in which they would license each exhibition, and if this application meets with your approval, we would be pleased to be favored with your order.

Trusting to hear favorably from you, we remain,  
Very truly yours,

3

GENERAL FILM CO.,  
Successors to Lubin Film Service Co.  
R. Etris.

R. E.  
M. A. F.

---

CHARLES H. BALSLEY, a witness subpoenaed on behalf of the petitioner, being first duly sworn by the Examiner, testified as follows:

4

Direct examination by Mr. GROSVENOR:

Q. Mr. Balsley, please state where you reside? A. 603 Main Street, Connellsville, Pennsylvania.

Q. Are you, or have you been, a member of the Board of Education of the Town or City of Connellsville?

A. Yes, sir.

Q. Are you now a member of that Board? A. Yes, sir.

1 Q. In the Summer of 1912, you may state whether or not you took some moving picture films of the school children of the Town of Connellsville? A. Yes, sir.

Q. About how many school children took part in that exhibition? A. About 2,500.

Q. And how long was the film? A. About 1,800 feet.

2 Q. I show you a letter dated September 14th, 1912, on the letterhead of the Motion Picture Patents Company, addressed to the Imp Theatre, Uniontown, Pennsylvania. Please state what negotiations you had, if any, with that theatre, the Imp Theatre of Uniontown, in regard to exhibiting the films of these school children in that theatre? A. Uniontown is twelve miles from Connellsville, and I made arrangements with the manager of the Imp Theatre, Mr. McClosker, to show my pictures, and took him up the reels, which he kept. A few days afterwards, he notified me that the General Film Company of Pittsburgh would not allow him to show them, and for me to come up and see him, and I came up and saw him, and he said he would write in to the Patents Company, which he did, and got a reply from them stating that they could not show the pictures. And I took the reels away then and brought them home.

3 Q. Is this the letter to which you refer? (Handing paper to witness.) A. (witness examining paper): This letter was handed to me by Mr. McClosker, the manager of the theatre.

MR. GROSVENOR: I offer it in evidence.

The paper offered is marked Petitioner's Exhibit No. 161 and is as follows:

**Petitioner's Exhibit No. 161.**

4 MOTION PICTURE PATENTS COMPANY.  
80 Fifth Avenue, New York.

September 14th, 1912.

Imp Theatre,  
28 East Main Street,  
Uniontown, Pa.

Gentlemen:

Replying to your letter of September 10th.



We will not grant you permission to violate one of the conditions of your license by making use of the unlicensed and infringing motion pictures referred to in your letter. 1

Yours truly,

MOTION PICTURE PATENTS CO.,  
By J. B.

JB/ACL

2

By Mr. GROSVENOR:

Q. Were you able to exhibit these pictures in this Imp Theatre at Uniontown? A. No, sir.

Q. You may state whether or not there was a theatre, a so called licensed moving picture theatre in the Town of Connellsville? A. Yes, sir.

Q. Were you able to exhibit these pictures of the school children in Connellsville, in that theatre at Connellsville? A. No, sir.

Q. You may state whether or not you made any efforts to exhibit the films in the theatre at Connellsville. A. Mr. Claybaugh, the manager of the theatre, wanted to put the pictures on, and wrote to the— 3

Mr. KINGSLEY: I object to what Mr. Claybaugh may have wanted to do.

By Mr. GROSVENOR:

Q. He said he would put them on and was willing to do so, was he? A. Yes, sir.

Q. Please state what he did. A. He wrote to the General Film Company of Pittsburgh, Pennsylvania, asking them for the privilege of putting these pictures on. They notified him that he could not put them on. 4

Q. Have you made an effort this year also to show those films in the theatre at Connellsville? A. Mr. Claybaugh told me several days ago he would put them on any time I wanted, and if they did not like it, they could take his license away.

1 Cross examination by Mr. KINGSLEY :

Q. Did you put them on yet? A. I put them on twice in Connellsville at the independent theatres.

Q. Did you put them on in Mr. Claybaugh's theatre? A. No, sir.

Q. When are you going to put them on? A. I am not going to put them on again. I have already showed them twice now.

Q. You had already showed them when you had this conversation with Mr. Claybaugh? A. The last time?

2 Q. Yes. A. Yes, sir.

Q. Did you intend to show them at Mr. Claybaugh's theatre at the time you had the conversation with him? A. No, sir, I did not.

Q. Why did you ask him if he would put them on if you did not intend to show them there? A. I did not ask him if he would put them on. He told me any time I wanted to put them on, to bring them around and he would show them.

3 Q. Did you go to see him about it? A. No, I did not go to see him in regard to that at all. I was talking to him about other business.

Q. Did you bring up the subject? A. I did not.

Q. When was it you took these pictures of the school children? A. It was the latter part of May, 1912.

Q. What camera did you use? A. Pathe.

Q. What is the number of it? A. I don't know.

Q. Where did you get the Pathe camera? A. A friend of mine loaned it to me.

Q. Who was this friend?

Mr. GROSVENOR: I object to that as immaterial.

4

By Mr. KINGSLEY :

Q. Who was the friend? Who is the friend? A. Well, I would rather not answer that.

Q. I prefer you should answer it, sir. A. Must I answer that?

Q. You are sworn to tell all the truth. A. I will.

Mr. GROSVENOR: I think that question is immaterial. If the witness does not want to answer it, I do

not see why he should be compelled to. He has testified that it was a Pathe camera. 1

Mr. KINGSLEY: I insist upon the question. This is cross examination.

By Mr. KINGSLEY:

Q. Who is that friend that loaned you the Pathe camera?

A. Well, if I must answer it I will answer it, but who is to tell me whether I am to answer it or not?

Mr. GROSVENOR: Nobody. You will have to use your own judgment. 2

The Examiner: Act on your own judgment in answering the question.

Mr. GROSVENOR: I am not your counsel, of course. You understand that.

The Witness: I would rather not. It is a very good friend of mine and I don't want him mixed up in it. I have a Williamson camera now of my own.

By Mr. KINGSLEY:

3

Q. Who is this friend? A. Sir?

Q. Who is this friend? A. I would rather not answer that.

Q. Does he live in Connellsville? A. No, sir.

Q. Where does he live? A. He lives in New York.

Q. Is he a manufacturer of cameras? A. No, sir.

Q. Is he a photographer? A. He is.

Q. Does he manufacture motion picture films? A. He does.

Q. Is he an independent manufacturer? A. Well, now, I could not answer that question. He was at this time. 4

Q. You mean in September, 1912? A. Yes, sir.

Q. Are you a photographer yourself? A. No, sir.

Q. An exhibitor? A. No, sir.

Q. Are you in the motion picture business? A. No, sir. I just take local pictures, and have them shown in the local theatre.

Q. Are you an amateur photographer? A. No, sir.

Q. Who is the friend?



1 Mr. GROSVENOR: I object to that question on the ground it is a repetition.

Mr. KINGSLEY: Do you refuse to answer?

Mr. GROSVENOR: The witness has already stated he refuses to answer.

Mr. KINGSLEY: I am not asking you, Mr. Grosvenor.

The Witness: I prefer not to answer.

2 By Mr. KINGSLEY:

Q. Well, do you refuse to answer? A. Mr. E. S. Porter of the Famous Players.

Q. What company is he connected with? A. The Famous Players Film Company. He was at that time with the Rex. Mr. Porter is an old schoolmate of mine.

Q. When was it, Mr. Balsley, that you got this Pathe camera? At what time? The one you borrowed? A. I did not buy it.

Q. The one you borrowed? A. Oh. Why, I think it was along about the 1st of May, 1912. Along about that time.  
3 I took the picture shortly after I got the camera, I know.

Q. Did you ever write to the Motion Picture Patents Company in New York asking for a permit with respect to a Pathe camera? A. Yes, sir.

Q. And did you receive in reply from the Motion Picture Patents Company a letter stating in substance that they refused to give you a license to use a camera embodying the inventions infringing upon inventions of their own? A. Yes, sir.

Q. So that at that time, you thought it desirable to write to the Motion Picture Patents Company for a license?  
4

Mr. GROSVENOR: I object to this, as this transaction now referred to upon cross examination is all considerably subsequent to the testimony given on direct examination, and relates to subsequent matters.

Mr. KINGSLEY: It grows from it.

Mr. GROSVENOR: The witness has not shown it was prior, and my opinion is it was subsequent.

By Mr. KINGSLEY:

1

Q. When was it you took the pictures of the school children? A. The latter part of May.

Q. When was it you exhibited them? A. They were exhibited, I think, in July, the first time.

Q. Exhibited in July the first time? A. Yes, sir, in 1912.

Q. What theatre did you exhibit them at? A. The Soicin Theatre.

Q. Where was that? A. Connellsville.

Q. And did you exhibit them in Connellsville before you exhibited them in Uniontown? A. They were never exhibited at Uniontown. 2

Q. So that all the exhibition you have had of these pictures has been in Connellsville? A. Yes, sir.

Q. How many times have you exhibited them there? A. Twice.

Q. You mean on two days, two separate days? A. They ran a whole week the first time.

Q. Two separate complete weeks? A. No. One week the first time and three days the year later.

Q. Both at the same theatre? A. Both at the same theatre. 3

Redirect examination by Mr. GROSVENOR:

Q. Mr. Balsley, look at these letters which I show you, and state whether these are the letters relating to obtaining a camera by you, with respect to which you testified on cross examination? (Handing papers to witness.) A. (witness examining papers): Yes, sir.

Mr. GROSVENOR: I offer those in evidence.

4

The papers referred to are marked respectively Petitioner's Exhibit No. 162, Petitioner's Exhibit No. 163, Petitioner's Exhibit No. 164, Petitioner's Exhibit No. 165, Petitioner's Exhibit No. 166 and are as follows:

1

**Petitioner's Exhibit No. 162.**

Offices in All the Principal Cities of the World.

**PATHE FRERES.**

Motion Pictures.

**STUDIO**

1-3-5 Congress St.

Jersey City Heights, N. J.

2

(Branch offices listed.

Sept. 7th, 1912.

Mr. Chas. H. Balsley,  
Connellsville, Pa.  
Connellsville, Pa.

Dear Sir:

3

We are in receipt of your letter of the 6th inst. and in reply to same wish to say that in order to furnish you with our moving picture camera you should address the Motion Picture Patents Company, 80 Fifth Avenue, New York City, advising them the use you will make of this apparatus and also soliciting a permit, authorizing us to accept your order for same.

Enclosed herewith we beg to hand you catalog of the camera and its different parts.

Yours very truly,

**PATHE FRERES,**  
per M. Ramuez Tonel.

4

MR/CR

The Motion Picture Patents Co. refused me the above permit.

C. H. B.



**Petitioner's Exhibit No. 163.**

1

(Copy.)

Connellsville, Pa., Jan. (date illegible), 1913.

Pathe Freres,  
New York, N. Y.

Gentlemen:—

Kindly advise if there is any possible way for me to secure a Pathe camera from your company without a permit from the Motion Picture Patents Company. 2

I have written them requesting a permit, which they positively refused to grant me.

The reason I wish to secure one of your cameras is because I am familiar with its operation.

Yours very truly,

Chas. H. Balsley.

**Petitioner's Exhibit No. 164.**

Offices in All the Principal Cities of the World. 3

PATHE FRERES.

Motion Pictures.

(Branch offices listed.)

Jersey City, N. J., Jan. 3rd, 1913.

Mr. Chas. H. Balsley,  
115 First St.,  
Connellsville, Pa.

Dear Sir: 4

We are in receipt of your letter of the 1st inst. and in reply wish to say that we have to be authorized by the Motion Picture Patents Company, 80 Fifth Avenue, New York City, for the sale of our Motion Picture camera, as they are owners of its patents.

Yours very truly,

PATHE FRERES,  
per M. R. T.

MR/CR

1                   **Petitioner's Exhibit No. 165.**

(Copy.)

Connellsville, Pa., Jan. 6th, 1913.

The Motion Picture Patents Co.,

New York, N. Y.

Gentlemen:—

2       Although you have refused to grant me a permit to purchase one of your cameras from the Pathe Freres Company, I again take the liberty to write you in regard to this camera.

The reason I wish to secure one of your cameras, is because I am familiar with its operation, having used one of them last summer.

Kindly advise if there is any possible way for me to secure a Pathe camera from your company, and what restrictions will be placed on the use of camera should you sell me one.

Yours truly,

Chas. H. Balsley.

3                   

---

**Petitioner's Exhibit No. 166.**

MOTION PICTURE PATENTS COMPANY

80 Fifth Avenue, New York.

January 9th, 1913.

Mr. Charles H. Balsley,  
115 First Avenue,  
Connellsville, Pa.

4   Dear Sir:—

Replying to your letter of January 6th.

This Company does not manufacture nor sell motion picture cameras, and we are not prepared at this time to grant you a license to use a camera embodying inventions covered by patents that we own.

Yours truly,

MOTION PICTURE PATENTS COMPANY,

By F.

JB/ACL.

By Mr. GROSVENOR:

Q. The conversation with the owner of the licensed theatre at Connellsville, respecting which you have just testified on cross examination, was the conversation which you had in the year 1913, a year after you took the pictures, and a year after your first attempt to show the pictures in the licensed theatre in Connellsville? A. Yes, sir.

Recross examination by Mr. KINGSLEY:

Q. What kind of a projecting machine does Mr. Claybaugh use? A. I could not tell you. I don't know.

Q. Do you know anything about projecting machines? A. I have never been in the booth. I don't know what kind he has. He has the Edison Talking Picture there. I don't know what it requires to use them.

Q. You did not write any letter in May of 1912 respecting the Pathe camera, did you? A. I don't remember. I wrote several times. I tried to get a camera every place.

Q. You wrote to Mr. Porter? A. I wrote to Mr. Porter to try to get me one.

Q. In May, 1912? A. Yes, I wrote him, I think, several times. I tried every place I could. I bought a camera several months ago—a Williamson.

Thereupon, at 12.30 P. M., a recess is taken until 2.30 P. M. at the same place.

---

New York, N. Y., July 7th, 1913.

The hearing was resumed pursuant to adjournment at 2:30 o'clock P. M. on this July 7th, 1913, at Room 47, Federal Building, New York City.

The appearances were the same as at the morning session.

Thereupon, LEWIS M. SWAAB resumed the stand for cross examination.

Cross examination by Mr. KINGSLEY:

Q. What business are you in now, Mr. Swaab? A. In



1 the same business I was, and have been for the past nine years, selling motion picture machines, supplies, and renting films.

Q. And you kept right on in the business after you had the replevin actions brought against you— A. (interrupting): Yes, I kept on.

Q. (continued):—by some of the licensees of the Motion Picture Patents Company? A. By all of the licensees.

Q. At any rate, you kept on in business after these actions were begun? A. Yes.

2 Q. Now, I think you said something on your direct examination about the violation of the release-day rule. Did you send certain films from your place of business before eight o'clock in the morning? A. On one certain occasion, yes.

Q. On one certain occasion? A. To one certain customer.

Q. To one certain customer? A. Yes, sir.

Q. And did you do that on a number of occasions? A. Yes, sir.

Q. You sent the film by a special messenger to the train? A. Yes, sir.

3 Q. And a special messenger went on the train to Baltimore? A. No, sir, the messenger did not go on the train.

Q. But it was delivered to someone on the train? A. No, sir, by express.

Q. It was shipped by express? A. Yes, to Baltimore. The film left my place at ten minutes to eight o'clock and it was shipped on the 8:10 train to Baltimore.

Q. You shipped it to be used that day? A. At about eleven o'clock in the morning.

Q. You knew that the release-day rule did exist, didn't you? A. Yes, sir.

4 Q. And you knew that if you shipped the film ten minutes before eight o'clock, the release hour being eight o'clock, that you were violating the rule? A. No, not exactly, because the film did not actually reach Baltimore until eleven o'clock, and didn't leave Philadelphia until 8:15.

Q. But, at any rate, it left your place of business before eight o'clock? A. Yes, sir.

Q. And the release-day rule prohibited its leaving your office before eight o'clock? A. Yes, sir.

Q. And you received a letter, did you not, from the Motion Picture Patents Company, in which they called your

attention to the fact that this rule was in the interest of all the exchanges, and that they would not permit you to violate it— A. No, I do not recall the wording of that letter, but I remember receiving a letter to that effect. 1

Q. You received such a letter— A. Calling my attention to the fact that I was shipping film before 8 o'clock.

Q. Now, after certain reels were replevied from you, you kept right on in business, did you not, with independent films? A. Yes, sir.

Q. And you kept right on supplying your customers with independent films? A. No, sir, because the majority of them left me. 2

Q. But you kept on supplying the number you had? A. Yes, a few of them.

Q. And you took on new customers and remained in business every week? A. Yes, with independent film.

Q. How many reels of film of the Patents Company were in your place at the time of the replevin suits? A. I do not recall. I do know that the men of the Patents Company, together with a Deputy Sheriff, took every reel out they thought they owned.

Q. How many did you have in your place of business at that time? A. I can't answer that. 3

Q. Did you have a six months' supply? A. Perhaps more or less, I can't answer that.

Q. How many films were out among your customers at that time? A. I can't answer.

Q. Where are the books which show what films you had on hand at that time, and the licensees from whom they were received? A. There was one book of record; it might be called a "stock ledger" or a "stock record." When I received a film we wrote the date down, and the title, and the name of the maker, and so with each reel, so we could locate it, just what reel it was, by number and name. 4

Q. And that book has since disappeared? A. No, sir.

Q. Have you still got it? A. Yes, sir.

Q. Did you produce it when you were asked for it on the trial of the suit of the Edison Company in Philadelphia?

Mr. GROSVENOR: I object to that as immaterial, and not proper cross examination. What this witness may have done in this other suit has no bearing on the suit here, or on this case.

- 1 The Witness: I did not produce it because I thought it was lost, and I went back to my office and subsequently found it.

By Mr. KINGSLEY:

Q. When was it that you subsequently found that book?  
A. The day of the trial.

Q. The trial of the Edison Company? A. No, sir; I think it was the Biograph Company.

Q. When was this trial? A. Sometime in May.

2 Q. Last May? A. Yes, sir.

Q. This past May? A. Yes, sir.

Q. And on that occasion you testified in court in Philadelphia that the book was lost? A. To the best of my knowledge I said it was lost, but subsequently it was found.

Q. And you found it the same day? A. Yes, sir.

Q. In your office? A. Yes, sir.

Q. Who found it, you or your bookkeeper? A. I did.

Q. You had been subpoenaed to produce that book before you came to court that morning? A. Yes, sir.

3 Q. And now you have that book? A. Yes, sir. But that book will show films purchased long before the trust or the Patents Company was in business—

Q. Having found the book that you said you could not find, how much licensed film now had you in your possession at the time the replevin suits were brought? Have you undertaken to find out how much you had at that time? A. No, sir.

Q. What date were the replevin suits brought? A. On January 24, I think.

Q. Of what year? A. 1911.

4 Q. Had you received notice of cancellation prior to that time? A. Yes, sir.

Q. And when did you receive that notice of cancellation?  
A. Nineteen days prior to that.

Q. Nineteen days prior to that time? A. Yes, sir.

Q. And that was on what date? A. January 4th.

Q. Of the same year? A. Yes, sir.

Q. Now, that you are doing business with independent manufacturers, do you still have a release day rule? A. Yes, sir.

Q. And do you live up to that rule? A. No time limit, but merely a release-day rule.



Q. But a release-day rule? A. Yes, sir.

1

Q. And there is a release-day rule? A. Yes, sir.

Q. And are you supposed to comply with it? A. Yes, sir, but there are no hours—

Mr. GROSVENOR: The release applies as of the time of its exhibition at the theatre, and not as to the time of leaving the office of the rental exchange?

The Witness: No, sir; no time at all expressed, but we can ship it out the day before provided it is not used until released.

2

By Mr. KINGSLEY:

Q. Prior to the Edison License Agreement, I think you said the prices of films so far as the respective manufacturers were concerned, were substantially the same? A. Yes, sir.

Q. That is, at that time they had about the same general scale of prices for films of similar quality? A. Yes, sir.

Q. So that the competition, if there was any at that time, did not affect the prices in general? A. No, sir.

Q. Have you the catalogue of the projecting machines which you had here on your direct examination? A. No, sir.

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Q. Where is that now? A. In my office.

Q. Will you mail that to the Examiner? A. Yes.

Q. So that we can have it here to-morrow or the next day? A. Yes, sir.

Q. That is an exhibit in the case? A. Yes, sir.

Q. Did you belong to the Film Service Association? A. Yes, sir; I did, to the "F. S. A."

Q. And was that a voluntary association of rental exchanges? A. I don't think so.

Q. Did you go into it yourself? A. Yes, sir.

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Q. How are you doing business, as a corporation, or as an individual? A. As an individual now.

Q. Were you ever doing business as a corporation? A. No, not as a corporation.

Q. Why do you say "as an individual now?" A. Because there were others interested with me before.

Q. Did you go under the name of a company? A. Yes, sir.

Q. Did you have articles of copartnership or association? A. No, sir.

1 Q. You were really the principal man in the organization?

A. Yes, that is right.

Q. The license agreement which you signed, was that signed in the name of your company or in your own name?

A. Under my own name.

Q. And signed as "Lewis M. Swaab?" A. Yes, sir.

Q. You wrote a letter to the Patents Company, did you not, in which you stated in terms, or in effect, that your competitor could put on films at eight o'clock in the morning, almost three hours ahead of the receipt of that film in Baltimore? A. Yes, sir.

2 Q. Now, at what time did motion picture theatres open in Baltimore? A. About between 8—on the business streets between 8 and 8:30 o'clock in the morning.

Q. But the bulk of the business does not come until along later in the day? A. I judge by what they do in Philadelphia; and I presume it is the same as in Philadelphia—they open at 8:30 in the morning.

Q. But the bulk of the business is done later in the day? I am not talking about Philadelphia now. A. I am not in the theatrical business, and I cannot answer that.

3 Q. When the films were replevied from your stock, did you seek the advice of a lawyer? A. Yes, I did.

Q. And did you and this lawyer go to the court? A. Yes, I did.

Q. And to what Judge? A. Judge Sulzberger.

Q. And did Judge Sulzberger look over the papers, or listen to any argument on the papers? A. I presume that he did; I wasn't present at the hearing, but he nevertheless allowed a stay, for they were not allowed to take out the film that night.

4 Q. But were taken out the following day? A. No, sir, several days after that.

Q. What day were the films taken away? A. Well, I can't answer that.

Q. Were they taken away on the 24th of January, 1911? A. No, sir; that was the day of the replevin.

Q. But they had taken possession of the films at that time? A. Yes, had an officer there all the time while the films remained in my possession.

Q. And on the 24th day of January, 1911, the films were

taken into the possession of the licensees, or their representatives? A. Yes, sir. 1

Q. And how many films? A. 313, I think.

Q. Then that afternoon, or during that day, your attorney appeared before Judge Sulzberger? A. Yes, sir.

Q. Who listened to the arguments respecting the replevy of these films? A. Yes, sir.

Q. And later on the films were taken away? A. I should judge in about a week, more or less.

Q. But they were taken away after this matter had gone into court? A. Yes, sir.

Q. Now, when you were asked if you wanted to sell your business you said "yes?" A. Yes, sir. 2

Q. And the price agreed upon was \$37,000? A. Yes, sir.

Q. And arrangements were made for you to turn your business over to the purchaser? A. Only verbally.

Q. Verbal arrangements were made to turn your business over to the purchaser? A. Yes, sir.

Q. And later on you withdrew from that arrangement? A. No, sir, I did not.

Q. Well, did you turn the business over to the purchaser? A. No, sir, I asked for an agreement—

Q. (interrupting): I am just asking you did you turn your business over to the purchaser? A. No, sir. 3

Q. Did you have some verbal arrangement for continuing in the employ of the purchaser? A. That was a part of the verbal proposition that was made.

Q. Do you remember going to the office of the Patents Company sometime in December, 1911, and seeing Mr. Marvin there? A. Yes, sir.

Q. And do you still say that the only conversation that you had with Mr. Marvin was that you asked him what complaints were made against you, whereupon he insisted upon reading to you the exchange license agreement, paragraph by paragraph? A. Yes, sir. 4

Q. And gave you no other explanation? A. No, sir.

Q. But simply read to you this license agreement? A. Yes, and told me there was a charge against me, but I couldn't learn what the charge was.

Q. And after the replevin suits, what films did you use and do business with? A. Independent film.

Q. Did you use independent film entirely? A. I had quite



1 a large stock of old film that was purchased long before the Patents Company came into existence.

Q. How many reels of old films did you have on hand at the time that the replevin suits were brought? A. I can't tell you in round numbers, I don't know, but quite a large number; I had some films over five years old.

Q. And you don't know how much you had? A. No, sir, not exactly.

Q. You still had plenty to go ahead doing business? A. No, sir; not plenty to go ahead without buying fifteen new reels weekly at that time.

2 Q. And could you buy that many weekly? A. Yes, sir.

Q. At that time? A. Yes, sir.

Q. How many reels do you buy weekly of film now? A. I don't know.

Q. You are not in the film rental business? A. No, sir, merely a member of a company—

Q. And you know nothing about the management of the company? A. No, sir.

Q. Have you retired from the business? A. No, sir; I have an interest in the company.

3 Q. How many licensed films did you have remaining in your stock after the replevin suit? A. I must repeat, I cannot answer that.

Q. Did you ever have them checked up afterwards? A. No, sir.

Q. Were you familiar with the terms of your license agreement with the Patents Company licensees? A. I suppose I was.

Q. Did you know that that film was furnished under lease, and that you had not purchased it? A. No, I did not understand it that way.

4 Q. You didn't so understand it? A. No, sir.

Q. You understood then that under the license agreement that the films that were released to you were in reality sold? A. No, I didn't say that; I didn't feel that it was their property.

Q. Although they had been sent to you on a lease which you were required to sign before they were shipped to you? A. Latterly the bill heads said "leased."

Q. What do you mean by "latterly?" A. I mean a couple of months after the Patents Company came into existence. Prior to that the bill heads read "sold."

Q. And when the Patents Company came into existence you signed the licensed rental agreement with the company?  
A. Yes, sir.

Q. And that agreement provided for the leasing of films, and you understood so? A. Yes.

Q. So that all films received from the Patents Company's licensees, after you signed that license agreement, were received by virtue of the lease which they made to you of them?  
A. Yes, sir.

Q. At the end of a certain number of months you were required to return to the Patents Company's licensees an amount of film equivalent to the film which you had received seven months prior thereto? A. And I did that.

Q. You had been doing that? A. Yes, sir.

Q. And you did that therefore because that was under the terms of the license agreement? A. Yes, sir.

Q. You wanted to live up to the terms of the license agreement. When you received your notice of cancellation on January 3rd or 4th—you say it is the 4th? A. I have the post office records to show that.

Q. You knew that in about twenty days your license would be terminated? A. Yes, sir.

Q. You knew that this film in your possession which had been received from the Patents Company's licensees would revert to their possession? A. Was that stated in that letter?

Q. That was in the license agreement? A. I believe it was.

Q. And you had signed the license agreement? A. Yes, sir.

Q. You are a business man who realizes what he is signing; was this film which was replevied on the 24th of January, 1911, film you had accumulated there in your place with the intention of restoring it to the licensees pursuant to that license agreement? A. That film was in use.

Q. You did not intend to restore it? A. I didn't give that a thought.

Q. And you had at least nineteen or twenty days prior to that time received notice of cancellation? A. I had not given it any thought.

Q. And when they replevied the films did you give it any thought then? A. No, sir.

Q. You didn't give it any thought? A. No, sir.

1 Q. How many reels of film did they replevy? A. To the best of my knowledge, three hundred and thirteen in my office, and six under another name in the Pennsylvania Railroad station.

Q. And that makes three hundred and nineteen reels all told? A. Yes, sir.

2 Q. How many reels of motion pictures leased to you by the Patents Company's licensees, and belonging to the licensees, did you have in your possession there at your place of business, or scattered about among the various exhibitors, that you were serving on the day of that replevin? A. I have answered that question several times; I can't tell you.

Q. Did you have three or four hundred reels? A. I presume so.

Q. Did you have five hundred? A. I won't say for sure about that.

Q. Did you have six hundred? A. I suppose I had that many, probably more.

Q. What is your best judgment? A. I wouldn't like to guess at it.

Q. Seven hundred and fifty? A. I wouldn't guess at it.

3 Q. At least four or five hundred? A. Yes, sir, probably.

Q. Of these 400 or 500 reels of film belonging to the Patents Company's licensees which you had in your possession on that day, how many have you returned since? A. I have not returned any.

Q. What have you done with them? A. I don't know where they are now.

Q. Have you worn them out? A. I presume so.

Q. Have you sold them? A. No, sir.

Q. But you don't know where they are? A. No, sir.

4 Q. You think you have worn them out? A. Yes, sir.

Q. This replevin suit was brought in January, 1911? A. Yes, sir.

Q. So that, notwithstanding the fact that you had signed this license agreement, and the licenses had been cancelled, and the manufacturers had demanded the return of their films, you kept these five or six hundred reels of films, and wore them out? A. I don't remember.

Q. You did not make any attempt to return them to



the owners? A. I don't remember, but I did not make any attempt— 1

Q. You don't remember the number, but whatever the number? A. Yes.

Q. Are you using any licensed film whatever now? A. No, sir.

Q. How long since you ceased using licensed film? A. I have not handled any film since last October.

Q. And when you say you "have not handled any" you mean you are out of active participation in the business? A. Yes, sir.

Q. Did the company with which you are connected handle any of that film, or get any of it from your business? A. No, sir. 2

Q. And yet you don't know what became of it? A. I presume it is worn out.

Q. But do you know that some of it is still in their possession? A. I know it is not.

Q. Have you had it checked up to see? A. No, I have not done that.

Q. Now, you had a suit with the Lubin Company, did you not? A. Yes, that was one of the replevin suits. 3

Q. That was a replevin suit? A. Yes, sir.

Q. And there was a trial before a jury? A. Yes, sir.

Q. And I think that you testified on your direct examination that you received, or recovered, a verdict for \$1,800? A. Yes, sir.

Q. Have you collected that verdict? A. No, sir.

Q. Isn't it true that that case was appealed? A. Yes, sir.

Q. And that judgment was reversed? A. On a technicality, yes, sir.

By Mr. GROSVENOR: 4

Q. And that case was sent back for trial? A. Yes, sir.

Q. For retrial? A. Yes, sir.

Mr. KINGSLEY: I offer in evidence a certified copy of the Decision of the Supreme Court of Pennsylvania, Eastern District, in the case of Lubin Manufacturing Company, appellant, vs. Lewis M. Swaab.



Each motion picture sought to be recovered contained the plaintiff's trade-mark and was delivered to the defendant in a box containing a label with certain contract conditions printed thereon, *inter alia*, that the licensee only had the right to sub-let the motion picture contained in the box while his license agreement with the Patents Company remained in full force and effect, and that violation of any of the conditions printed on the label would entitle the lessor "to immediate possession of this motion picture." A written notice of cancellation of the license of the defendant was given by the Patents Company on January 3, 1911, but did not reach him until the following day. The notice specifically stated that the annulment was for violation of the terms and conditions of defendant's license agreement, and that all licensed motion pictures in his possession should be returned to the "manufacturers thereof upon expiration of twenty days from date." On January 24, 1911, the writ of replevin issued. In the original statement of claim the plaintiff depended upon its right to possession of the films at the end of the twenty days stipulated in the license contract and mentioned in the notice; but at trial it was allowed to amend and to furnish a bill of particulars, wherein it averred that the defendant had sub-let the motion picture films sought to be replevined after his license had been revoked by the Patents Company, contrary to the conditions of the label contract and that thereupon the plaintiff was entitled to immediate possession of such films without waiting for the expiration of the twenty days given for their return in the license contract. The defense rested upon several grounds, the principal of which was that the writ had issued prematurely. The assignments of error raise a number of questions which we shall dispose of in order.

The first assignment complains that the trial Judge struck out certain testimony given by the defendant on cross examination, to the effect that on January 24, 1911, he had in his possession "quite a number of films" in addition to those covered by the replevin, which films he had obtained from the defendant company and had not returned. One of the contentions of the defendant was that he had been subjected to undue oppression in the manner in which the writ of replevin was executed, and the testimony in question was elicited by the plaintiff for the purpose of showing that there was "absolutely no oppression." We are not convinced



1 that the trial Judge committed error in the ruling under consideration, for it is not at all clear that the testimony tended to support the purpose for which it was offered. The assignment is overruled.

The second assignment calls attention to a question propounded to the defendant upon cross examination, in relation to an alleged default on his part in not complying with certain terms of his license agreement; this particular default was not pleaded and hence there was no error in declining to permit an inquiry in relation thereto. The assignment is overruled.

2 The third and fourth assignments cover the admission in evidence of nine writs of replevin issued in other cases by other plaintiffs but served simultaneously with the writ in this case, and the trial Judge's subsequent refusal to strike this evidence out. Among the defences averred were undue oppression at the time of the replevin and a conspiracy between the plaintiff, the Patents Company and others to harm the defendant; the latter was allowed considerable latitude to show the alleged conspiracy and oppression, and in this connection he was permitted to refer to these nine other writs; but he failed to produce evidence from which an unlawful combination between the plaintiff and others could be found or to show that he was subjected to any unusual oppression. Under these circumstances the other writs of replevin had no place in the case, and since exemplary damages were claimed their admission must have been prejudicial to the plaintiff. The rulings in question constitute material error and these assignments are sustained.

3 The fifth, sixth and seventh assignments complain of the refusal to give binding instructions or to enter judgment *non obstante veredicto* for the plaintiff. It is argued that the testimony of certain witnesses called by the defendant shows that he did in fact sub-let films which were the property of the plaintiff after the cancellation of his license by the Patents Company, and it is contended that this breach of the conditions printed upon the labels entitled the plaintiff to immediate possession of the films sought to be recovered by the replevin. But the appellant apparently overlooks the fact that the conditions printed upon the respective labels did not constitute a contract affecting generally all licensed motion pictures possessed by the defendant, as did the license agreement with the Patents Company; on the contrary, the label contract

was restricted in each instance to the contents of the particular box to which it was attached. Unless it was made to appear that the very films covered by the writ had been sub-let after the date of the cancellation, in violation of the contracts printed on their various box labels, the terms of those contracts could not be depended upon to support the plaintiff's action. It is not clear beyond controversy that the defendant had sub-let any licensed films after the annulment of his authority so to do, and more particularly it is not clear that the films referred to by the witnesses who testified that they had received service from the defendant subsequently to the revocation of his license, were among those covered by the plaintiff's writ; hence, so far as the films replevined were concerned, since it did not plainly appear that they had been thus sub-let, it could not hold as a matter of law that the plaintiff was entitled to their immediate possession. These assignments are overruled.

The eighth, ninth and tenth assignments cover the refusal of the trial Judge to charge that the defendant would not in any event be entitled to more than nominal damages. If there was no violation of the label contracts connected with the particular films replevined, the replevin was premature, for at the time the writ issued, the twenty days given in the license contract for the return of the films had not expired by one day. If the writ was prematurely issued it was bad, and the defendant was entitled to whatever actual damages the jury might find he had proved. So far as the value of the defendant's right of possession entered into the assessment of damages, by reason of the terms of the general contract under which he held all licensed films, his recovery would of necessity be limited to the value of such use as he would be entitled to make of the films under the conditions and restrictions of that contract after the date of the cancellation of his license. (See *Cobbey on Replevin*, 2nd Ed. Sec. 897.) But the damages could not be restricted to one day's loss as urged by the appellant, on the theory that the writ would have been good had it issued on the following day. No authority is cited for any such doctrine, and so to hold might lead to dangerous results in the future; for under such a general rule of law claimants of property could well afford to risk merely nominal damages and take out writs before their right of possession had actually vested. Owing to the position in which the defendant is placed by the terms

1 of the license contract under which he operated his business, the damages which it is possible for him to recover may be inconsiderable, but we cannot say as a matter of law that they would be merely nominal. These assignments are overruled.

The eleventh assignment calls attention to the refusal of a point for charge, submitted by the plaintiff, which was tantamount to a request for binding instructions. Much that we have already said in disposing of the fifth, sixth and seventh assignments is applicable to the present one and need not be repeated here. The assignment is overruled.

2 The twelfth assignment complains of the affirmance of a point to the effect that, if the jury finds for the defendant and further finds "that the taking was attended by circumstances of aggravation, vexation and hardship, exemplary damages are allowable." We have already said, under the third and fourth assignments, that the evidence failed to show any unusual oppression at the time the goods were taken under the writ. In the nature of things, when the sheriff's officers came to the defendant's place of business the proceeding was bound to cause him inconvenience; but they did not remain an unusual time, and the fact that a watchman was left in charge for some days afterwards, pending the determination of certain legal steps taken by the defendant, was in nowise out of the ordinary; furthermore, the five men who helped the sheriff's officers find the goods covered by the writ were representatives of the Patents Company and not of the plaintiff. The carrying away of some boxes, etc., belonging to the defendant, in connection with the replevined films, could not be termed an act of outrage under the circumstances; the articles were returned the next day, and if the taking caused any special damage the defendant was entitled to prove and recover his loss as such. When upon the stand, in answer to the question, "I am asking you how, as a physical fact, at your place, you were in any way interfered with in the transaction of your business, except as to these reels which were the subject of this replevin?" The defendant replied, "There was no other interference." In *Cummings v. Gann*, 52 Pa., 484, an action of replevin, at page 491, we said, "It must be a rare case of misconduct \* \* \* in an action like this to authorize them (exemplary damages) at all," and in *McCabe v. Morehead*, 1 W. & S. 513, p. 516, we said, "The defendant is not entitled to any special damages

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he has sustained by being interrupted in his business in consequence of the property being taken from him under the replevin." Again, in *Carey v. Bright*, 58 Pa., 70, at p. 85, we said that where the evidence fails to show special vexation or oppression the court should call this fact to the attention of the jury and not permit exemplary damages. The request for charge covered by this assignment ought not to have been affirmed; the assignment is sustained.

By the thirteenth and fourteenth assignments the appellant submits that error was committed in leaving the issue of the plaintiff's ownership of the replevined films to the jury. It is true that the ownership of this property was duly proved by the plaintiff and admitted by the defendant; but these assignments will not be sustained, for the error, if any, was subsequently effectually cured by the trial Judge in his answer to one of the plaintiff's points.

The fifteenth assignment complains of a part of the charge wherein the trial Judge made reference to, and submitted an issue growing out of certain testimony which had been stricken from the record; this was error and the assignment is sustained.

Under the sixteenth and seventeenth assignments the appellant contends that the trial Judge committed error in instructing the jury that, after the date of the annulment of the defendant's license by the Patents Company, he had the right to deliver to a licensed exhibitor films leased to him by the plaintiff, if in so doing he was merely carrying out an arrangement with the exhibitor which antedated the cancellation. According to the general licensing arrangement controlling the business in which the parties to this controversy were engaged, a licensed exchange was under no obligation and had no right to deliver a film after the date of the cancellation of its authority so to do, and all licensed exhibitors must have known that they could not insist upon service from an exchange after the annulment of the latter's license. In addition to this, we find nothing in the evidence which would sustain a finding that the defendant was merely "carrying out an arrangement which antedated the cancellation" when he made the delivery referred to by the trial Judge in this part of his charge. These assignments are sustained.

What we have already written amply covers the matter called to our attention in the remaining assignments of

1 error, and we trust it will prove a sufficient guide should this case be again tried.

The judgment is reversed with a *venire facias de novo*.

LUBIN MANUFACTURING COMPANY v. SWAAB.

STATE OF PENNSYLVANIA,}  
EASTERN DISTRICT, }

2 I, ALFRED B. ALLEN, Deputy Prothonotary of the Supreme Court of Pennsylvania, in and for the Eastern District, do hereby certify that the above and foregoing is a true copy of the Opinion in the above entitled cause, so full and entire as appears of record in said Court.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of said Court at Philadelphia, this 8th day of April, A. D. 1913.

ALFRED B. ALLEN,  
Deputy Prothonotary.

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By Mr. KINGSLEY:

Q. Do you know W. J. Anderson? A. Yes, I do.

3 Q. Is he one of your customers? A. He was.

Q. Did you supply him with film at various times?

A. During the time he was licensed.

Q. Did you report W. J. Anderson? A. Yes, sir, I did.

Q. To the Patents Company? A. Yes, to the best of my knowledge.

Q. According to your license agreement? A. Yes, sir, to the best of my knowledge.

Q. Do you remember when Anderson's license was cancelled? A. I remember the time; I do not recall the date.

4 Q. Do you know what kind of stock he had on hand at that time? A. Not exactly.

Q. Did you ever examine it? A. No, sir.

Q. Did you ever send anyone to examine it? A. No, sir.

Q. Did you have W. J. Kelly as one of your exhibitors? A. Yes, sir, I did.

Q. At what places did you report W. J. Kelly? A. There were three places; I can't just recall their names. I gave that testimony in the case you have just mentioned and gave the names of the towns.

Mr. GROSVENOR: Those persons were not referred to on direct examination by me (addressing the witness)? 1

The Witness: No, sir.

Mr. GROSVENOR: I object to all of this examination as being immaterial, and as going into collateral matters.

Mr. KINGSLEY: But you did ask him on direct examination (reading): "Did you live up to the exchange license agreement?" and he said, "yes." 2

By Mr. KINGSLEY:

Q. Did you ever report W. H. Kelly, as doing business at York, Pa.? A. As doing business at York, Pa.?

Q. Did you ever report shipping film to W. H. Kelly, at York, Pa.? A. I can't answer that now; I don't know. I remember giving the names of the towns in which he did business, where I served him with film and paid the Patents Company's licensees for them.

Q. Do you know where the Economy Projecting Company was located? A. Never heard of it. 3

Q. Did you ever supply the Economy Projecting Company? A. I never heard of it.

Q. Were any of the reels which had been originally shipped to you, and which you had in turn leased to exhibitors, replevied from the Economy Projecting Company, at York, Pa.? I never knew of them to be replevined from the Economy Projecting Company; I never heard of them.

Q. Who were they replevied from? A. From W. H. Kelly.

Q. At York, Pa.? A. Yes, sir. 4

Q. Did you remit the royalty for some of your exhibitors at various times? A. For all the exhibitors.

Q. Did you ever remit royalty for W. J. Anderson? A. I did.

Q. Did you ever remit more than two dollars a week for Mr. Anderson? A. That I cannot recall. I always remitted for Mr. Anderson, but how much, I don't know.

Q. Last October, when you turned your business over to your successors, did you then have in your possession any



1 of the licensed film? A. There may have been some, I won't be positive of that.

Q. To whom did you dispose of your exchange? A. I did not dispose of it—I consolidated with several others.

Q. But you retired from it, did you not? A. As far as my actual attention was concerned.

Q. And under what name is it running now? A. The Interstate Films Company.

Q. Did you sell your interest at the time of the consolidation? A. No.

2 Q. Did you receive cash for your interest? A. I did not sell it.

Mr. GROSVENOR: I object to that as immaterial.

By Mr. KINGSLEY:

Q. In making the consolidation, regarding which you have testified, did you place a valuation upon your interest last October? A. I think I did.

Q. And was this valuation included in the new organization? A. Yes, sir.

3 Q. Did you receive money or stock for this valuation? A. I sold a half interest.

Q. And how much did you sell your half interest for? A. Is it necessary to answer that question?

Mr. GROSVENOR: No, it is not.

The Witness: I consider that my personal private affairs.

By Mr. KINGSLEY:

4 Q. Mr. Swaab, you have testified here regarding the verbal agreement to sell your exchange in 1910—

Mr. GROSVENOR (interrupting): Yes, but you are referring to a sale several years later—

Mr. KINGSLEY: Now, prior to the sale in October, 1912, regarding which you (addressing the witness) have just testified—

The Witness (interrupting): But the other sale was after this—

Mr. GROSVENOR: He testified about the offer in 1910, two years earlier, and an entirely different transaction, and relating to different parties— 1

Mr. KINGLEY: But this relates to the same subject matter, and relates to the same interest; and the purpose of the defendants is to show how much it was sold for in order that comparison may be established between the price of the business at the time he offered to sell it to the General Film Company—

The Witness (interrupting): I didn't offer to sell it to the General Film Company. 2

By Mr. KINGSLLEY:

Q. At the time you made the verbal agreement, at which time you made a price— A. (interrupting): I didn't make any price.

Q. Well, how much did you receive for your half interest in the exchange last October?

Mr. GROSVENOR: I object to that as immaterial, and as absolutely irrelevant under the issues; the fact that an offer was made in 1910, is a different matter. 3

By Mr. KINGSLLEY:

Q. How much did you sell it for? A. I refuse to answer that question, that is my private affair.

Mr. KINGSLLEY: I desire to call upon you, Mr. Examiner, to direct this witness to answer the question asked him.

The Examiner: I will state to counsel that under the order appointing me in this case, I have no right, as I view it, to direct a witness to answer, or decline to answer any question, but, upon application of counsel, the testimony of the witness will be certified, and the matter may be presented to the Court for determination. 4

By Mr. KINGSLLEY:

Q. Do you refuse to answer under the instructions of counsel for the Government?

1           Mr. GROSVENOR: I did not give him any instructions in the matter; he can answer or not on his own judgment. I object to the question as immaterial.

          Mr. KINGSLEY: I desire to have you, Mr. Examiner, read me what Mr. Grosvenor stated to the witness awhile ago.

          The Examiner: I will read the question you asked the witness, together with Mr. Grosvenor's statement, and the witness's statement.

2           Thereupon the Examiner read the following:

          "Q. And how much did you sell your half interest for?  
A. Is it necessary to answer that question?

          Mr. GROSVENOR: No, it is not.

          The Witness: I consider that my personal, private affairs."

          Mr. GROSVENOR: Mr. Swaab, you understand that I did not give you any instructions?

3           The Witness: I thoroughly understand that you have not.

          Mr. GROSVENOR (addressing the witness): If you have any doubt about it, you can consult with counsel. I give you no instructions in the premises, but I merely object to the question as entirely, wholly and absolutely immaterial, and as having no bearing upon any of the issues in this case, and being simply an inquiry into your personal affairs.

4           Mr. CALDWELL: I make this suggestion, Mr. Grosvenor: Why can't we go now before any District Judge that is available in the courthouse here, and who will hear us now, and have the question determined by him, and save time that way, instead of having the Examiner certify it to the Court in a more formal way.

          Mr. GROSVENOR: That is a question that I am not interested in one way or the other.

          Mr. CALDWELL: But that question does interest the defendants.

          Mr. KINGSLEY: There is no question about its materiality, because this witness has sworn he was



seriously injured by the replevin actions he has referred to, and this cancellation is a part of the petitioner's case, and it is one of the things upon which the petitioner has laid much stress. I do not know but that he sold his business for \$100,000. I ask, Mr. Examiner, that we suspend for a few minutes until we find whether we can see the Judge.

(A recess was taken for a few minutes.)

Mr. GROSVENOR: Mr. Swaab, I want to ask you a question in order to get this clear in my own mind. I understand your license was cancelled in the latter part of 1910, and that during the two years from that time up to the time just referred to by you in the fall of 1912, when you disposed of your business, you had not handled any of the licensed films, had you?

Mr. Swaab: No, sir.

Mr. KINGSLEY: By that you mean you did not get any more of the licensed films?

Mr. Swaab: That is right.

Mr. KINGSLEY: But you did continue to handle the old licensed film, aggregating several hundred reels, in your possession?

Mr. Swaab: I won't say the number. I did handle the old film.

Mr. GROSVENOR: Whatever was in your possession, you handled?

Mr. Swaab: Yes, sir.

Mr. GROSVENOR: And your particular business was handling Independent films?

Mr. Swaab: Yes, sir.

Mr. KINGSLEY: How many reels of Independent film did you begin buying a week when you became independent?

Mr. Swaab: Fifteen.

1                    Mr. KINGSLEY: How did that continue? Did it increase or diminish?

Mr. Swaab: It diminished. It was down to ten at one time.

Mr. KINGSLEY: When was it down to ten? Last October?

Mr. Swaab: No; before that.

2                    Mr. KINGSLEY: How many were you buying last October when you sold?

Mr. Swaab: Twelve.

Mr. GROSVENOR: In order to save time, I suggest that we suspend with this witness, and I will get rid of another witness who wants to get out of town.

(At this point the witness Swaab is withdrawn.)

3                    GEORGE W. BENNETHUM, a witness subpoenaed on behalf of the petitioner, being first duly sworn by the Examiner, testified as follows:

Direct examination by Mr. GROSVENOR:

Q. Mr. Bennethum, where do you reside? A. Reading, Pennsylvania.

Q. Were you residing there in November, 1911? A. Yes, sir.

Q. You had an interest in a number of moving picture theatres at that time, did you not? A. Yes, sir.

4                    Q. Please state how many theatres you owned in part or in whole, and the locations of the same. A. There were eight or nine. I am not positive whether it was eight or nine. Three of them located in Pottstown, Pennsylvania; two in Reading, Pennsylvania; and two in Allentown, Pennsylvania, and either two or three in Coatesville, Pennsylvania, at that time.

Q. Were these theatres which you owned, so-called licensed theatres? A. At that time, yes, sir.

Mr. KINGSLEY: What time was that?

The Witness: In 1911.

1

By Mr. GROSVENOR:

Q. You may state whether or not you had observed in the course of the latter part of the year 1912 and throughout the year 1911, a gradual merging of many rental exchanges in the General Film Company, and also the passing out of business of other rental exchanges? A. Yes, sir, I did.

Q. Were the licenses of these theatres which you have named, cancelled, on or about November, 1911? A. Yes, sir.

Q. I show you a letter dated November 15th, 1911, on the letterhead of the Motion Picture Patents Company. Please state whether that was a letter received by you on or about the time stated on the letter? (Handing paper to witness.) A. (witness examining paper): Yes, sir. A copy similar to this was sent to each and every theatre that I was interested in.

2

Mr. GROSVENOR: I offer it in evidence.

The paper is marked Petitioner's Exhibit No. 168 and is as follows:

3

**Petitioner's Exhibit No. 168.**

MOTION PICTURE PATENTS COMPANY.

80 Fifth Avenue, New York.

Nov. 15, 1911.

Mr. G. W. Bennethum,  
Picture Land Theatre,  
645 Penn. Street,  
Reading, Pa.

4

Dear Sir:—

You are hereby notified that your license has been cancelled.

Yours very truly,  
MOTION PICTURE PATENTS COMPANY,  
By J. B.

JB/ACL



1 By Mr. GROSVENOR:

Q. That letter simply states a cancellation of the license. I show you a copy of a letter, dated November 20th, 1911, addressed to the Motion Picture Patents Company. Please state whether that is a copy of a letter written by you in response to the letter just put in evidence and sent to the Motion Picture Patents Company (handing paper to witness). A. (witness examining paper): Yes, sir.

Mr. GROSVENOR: I offer that in evidence.

2           The paper offered is marked Petitioner's Exhibit  
169 and is as follows:

**Petitioner's Exhibit No. 169.**

GEO. W. BENNETHUM,

## Operator of

## Motion Picture Parlors.

Home Office, No. 645 Penn Street.

3 Reading, Pa., Nov. 20, 1911.

(Names of different "Parlors" omitted in printing.)

Motion Picture Patents Co.,

80 Fifth Avenue, New York City.

Gentlemen :—

Your letters of November 15th addressed to me at my different theatres received and contents noted. Will you kindly inform me for what reason my licenses were cancelled.

Thanking you in advance for this information, I remain,

Very truly yours,

G. W. B.

By Mr. GROSVENOR:

1

Q. In your letter to the Patents Company, you asked them this question: "Will you kindly inform me for what reason my licenses were cancelled?" A. Yes, sir.

Q. I show you a letter dated November 27th, 1911, on the letterhead of the Motion Picture Patents Company, signed "Yours truly, Motion Picture Patents Company, by H. N. M." and ask you whether that is the letter which you received in reply (handing paper to witness). A. (witness examining paper): Yes, sir.

2

Mr. GROSVENOR: I offer it in evidence.

The paper offered is marked Petitioner's Exhibit No. 170, and is as follows:

**Petitioner's Exhibit No. 170.**

**MOTION PICTURE PATENTS COMPANY**

80 Fifth Avenue, New York.

November 27th, 1911

Mr. Geo. W. Bennethum,  
645 Penn Street,  
Reading, Pa.

3

Dear Sir:—

Replying to yours of November 20th.

Licensed Exchanges by the terms of their license are not permitted to supply licensed motion pictures to persons who are engaged directly or indirectly in renting motion picture films, that infringe patents owned by the Licensor.

We understand that you are interested in the business of renting motion picture films.

4

Yours truly,  
MOTION PICTURE PATENTS CO.,  
By H. N. M.

HNH/ACL

1 By Mr. GROSVENOR:

Q. At the time that this letter was written, namely, November 27th, 1911, had you exhibited in your theatres any films which had not been made by the so-called licensed manufacturers? A. No, sir.

Cross examination by Mr. KINGSLEY:

Q. You say you never ran any unlicensed films in any of your theatres? A. Not at the time that I was licensed.

2 Q. Up to the time of your cancellation, do you mean by that? A. Yes, sir.

Mr. GROSVENOR: That is not quite clear. Do you mean that up to the time your license was cancelled you had not shown any films in your theatres which had not been made by the licensed manufacturers?

The Witness: Yes, sir. For all theatres that I was paying a royalty of \$2 a week, I showed none but licensed pictures.

3 By Mr. KINGSLEY:

Q. What did you show in theatres in which you were not paying \$2 a week royalty? A. Independent pictures.

Q. And where were these theatres? A. Well, I think at that time there was only one house at Coatesville where I was showing Independent pictures.

Q. Didn't you have one in Wilkes-Barre? A. No, sir. Never owned or was interested in a theatre in Wilkes-Barre.

Q. But you did have one in Coatesville? A. In Coatesville, the Coatesville Opera House, I think I ran films not licensed, because I did not pay any license for the theatre.

4 Q. But you had an agreement with the Patents Company, did you not, to the effect that you were to exhibit only licensed films? A. In theatres where I paid a license for them.

Q. But you also had an agreement with the Patents Company that you were not to exhibit licensed films in one theatre and unlicensed films in another theatre, did you not? A. No, sir; not to my recollection.

Q. What exchange were you connected with at that time? A. About that time, in 1911, I bought stock in the Exhibitors Film Exchange.



Q. And where was that located? A. A Delaware corporation, located at 23 North Ninth Street, Philadelphia, and transferred from Philadelphia to Wilkes-Barre, Pennsylvania. 1

Q. Then you did have an interest in a business in Wilkes-Barre, Pennsylvania? A. I did. No theatre, though.

Q. What you meant was that you had no theatre there? A. I had no theatre.

Q. How large an interest did you have in this rental exchange? I don't mean in dollars and cents. I mean in the proportion. Did you own half of it? A. Well, I don't think it was half. I think I owned forty-three per cent. I am not sure of the amount, though. 2

Q. And this was an unlicensed exchange, was it not? A. Yes, sir.

Q. And you were interested in this unlicensed exchange in Wilkes-Barre at the same time that you were showing licensed pictures in your licensed theatres? A. I became interested about two months before they cancelled my license in the theatres.

Q. So you knew pretty well why you had been cancelled, when you wrote the letter, did you not? A. I did not, no, sir. 3

Q. What projecting machine did you use in your theatres? A. At that time I used Powers No. 5 and No. 6, and I think Edison Model B.

Q. That was in the licensed theatres? A. All the theatres.

Q. In all your theatres? A. In all of my theatres, the same machine.

Mr. GROSVENOR: I want to introduce under the principle of admissions, and under the rules of evidence applying to admissions, in order to show inconsistent statements made by the defendants in this case, with statements heretofore made by them in other cases, the following: The answer of the Kleine Optical Company to the bill of complaint of the Edison Manufacturing Company, complainant, this suit being started March 6th, 1908, in the United States Circuit Court, Northern District of Illinois, by the Edison Manufacturing Company against Kleine Optical Company and George Kleine for infringement of reissued letters patent No. 12,192. 4

1

Mr. KINGSLEY: Objected to as incompetent, immaterial and irrelevant, relating to issues not embraced in this case, and not binding upon these defendants or any of them, also as not the best evidence.

Mr. CALDWELL: We do not object to the want of certification.

The paper is marked Petitioner's Exhibit No. 171 and is as follows:

**Petitioner's Exhibit No. 171.**

2

UNITED STATES CIRCUIT COURT

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

EDISON MANUFACTURING COMPANY  
*Complainant*

VS

IN EQUITY.

3

KLEINE OPTICAL COMPANY  
*Defendant*

THE ANSWER OF KLEINE OPTICAL COMPANY,  
DEFENDANT, TO THE BILL OF COMPLAINT OF  
EDISON MANUFACTURING COMPANY,  
COMPLAINANT

4

This defendant, now and at all times hereafter, saving and reserving to itself all and all manner of benefit and advantage of exception which can or may be had or taken to the manifold errors, uncertainties, imperfections and insufficiencies of the bill of complaint, as answer thereto, or to so much thereof as it is advised it is material or necessary to make answer unto, answering, says:

I. This defendant admits that it is a corporation organized and existing under and by virtue of the laws of the State of Illinois and having a regular and established place of business in the City of Chicago, in said State, and within the Northern District of Illinois, Eastern Division.

II. The defendant has no knowledge or information 1  
sufficient to form a belief as to whether the complainant  
ever was or is a corporation organized and existing under  
and by virtue of the laws of the State of New Jersey, or  
having its principal place of business at West Orange, in  
the said State, and leaves complainant to make such proof  
thereof as it may be advised is material or necessary.

III. This defendant admits that letters patent of the  
United States for alleged new and useful improvements 2  
in Kinetographic Cameras were issued to Thomas A. Edi-  
son, bearing date the 31st day of August, 1897, and num-  
bered 589,168; but denies, in manner more specifically  
hereinafter set forth, that the said Thomas A. Edison was  
the first, original and sole inventor of the said alleged  
new and useful improvement in Kinetographic Cameras  
described and claimed in the said letters patent; and de-  
nies that the said alleged improvement had not been known  
or used by others in this country, nor patented or described  
in any printed publication in this or any foreign country,  
before his invention thereof, and denies that the said al- 3  
leged improvement had not been in public use or on sale  
in this country for more than two years prior to his ap-  
plication for the said letters patent, and denies that the  
said alleged improvement had not been abandoned by the  
said Edison.

IV. This defendant, further answering, denies that in  
making the said application for said letters patent the said  
Thomas A. Edison complied with all the necessary con-  
ditions and requirements of the Statutes of the United  
States in such cases made and provided, and denies that  
the said letters patent were executed in due form of law, 4  
as alleged in the said bill.

V. This defendant, further answering, admits that the  
said letters patent were surrendered to the Commissioner  
of Patents, and that reissued letters patent No. 12,038  
were issued to the said complainant on the 30th day of  
September, 1902, as alleged in the bill of complaint; but  
denies that the said letters patent No. 589,168 were in-  
operative or invalid by reason of a defective or insufficient  
specification, and denies that the alleged error, whether



- 1 of inoperativeness and insufficiency of the specification or  
of claiming as his own invention or discovery more than  
he had a right to claim as new, arose from inadvertence,  
accident or mistake and without any fraudulent or decep-  
tive intention; and denies that the said Edison, by said  
reissue, corrected the defects and insufficiencies of the  
specification and claims of the said letters patent, and  
denies that the said Edison, in making the said applica-  
tion for reissued letters patent, complied with the re-  
quirements of the Statutes of the United States in such  
cases made and provided; and denies that said reissued  
2 letters patent No. 12,038 were for the same invention as  
the said original letters patent, and that they were issued  
in due form of law.

- VI. This defendant, further answering, admits that the  
said reissued letters patent No. 12,038 were surrendered  
to the Commissioner of Patents, and that reissued letters  
patent No. 12,192 were issued to the said Thomas A. Edi-  
son; but denies that the said reissued letters patent No.  
12,038 were inoperative or invalid by reason of a defective  
or insufficient specification, or by reason of the said pat-  
3 entee claiming as his own invention or discovery more  
than he had a right to claim as new, and that the alleged  
error arose from inadvertence, accident or mistake, and  
without any fraudulent or deceptive intention, and denies  
that the said application by amendment corrected the de-  
fects and insufficiencies of the specification and claims of  
the said reissued letters patent No. 12,038; and denies  
that the said application complied with the requirements  
of the Statutes of the United States in such cases made  
and provided; and denies that the said reissued letters  
4 patent No. 12,192 were for the same invention as said  
original letters patent No. 589,168, or for the same inven-  
tion as said reissued letters patent No. 12,038; and denies  
that the said reissued letters patent No. 12,192 were issued  
in due form of law as alleged in the said bill of complaint.

VII. This defendant, further answering, says that it  
has no knowledge or information other than that set forth  
in the said bill of complaint, whether or not the said  
Thomas A. Edison by an instrument in writing, duly exe-  
cuted, delivered and recorded in the United States Patent

Office, assigned and transferred to the complainant the entire right, title and interest in and to the aforesaid reissued letters patent No. 12,192, and the alleged improvements covered thereby, and requires strict proof of such alleged assignment and transfer. 1

VIII. This defendant, further answering, denies that the said alleged improvements of the reissued patent No. 12,192 are of great utility, and that they have been introduced into extensive public use by the said complainant, and denies that the complainant has been to great trouble and expense in and about said alleged improvements in introducing the same into public use, and denies that it will be deprived of large or any gains or profits therefrom by any unlawful act of the defendant. 2

IX. This defendant, further answering, denies that all of the principal manufacturers of moving picture films in the United States, believing the said reissued letters patent to be good and valid and acknowledging and acquiescing in the validity thereof, have taken out licenses under the said reissued letters patent and paid, or agreed hereafter to pay therefor, large or any sums of money to the complainant, and denies that the complainant will be damaged and deprived of large or any gains and profits by any unlawful act of the defendant, either by reason of the abrogation of such alleged licenses or otherwise. 3

X. This defendant, further answering, denies that the said complainant and all persons making under its authority Kinetoscopic films employing, embodying, operating or made in accordance with the said reissued letters patent No. 12,192, have, since the issuing thereof, given notice to the public that the same are patented by affixing thereto the word "Patented," together with the day and year in which the said reissued letters patent were granted or that such notice has been given to the public by any other means. 4

XI. This defendant, further answering, denies that it has violated any right of the complainant, or that it has contrived to injure the said complainant, or to deprive it of any benefits or advantages which might have accrued

1 to it from said alleged invention, after the grant of the  
said reissued letters patent No. 12,192, and before the  
commencement of this suit, or at any other time; and  
denies that it has, without license or allowance or against  
the protest of the said complainant or in violation of its  
rights, within the Northern District of Illinois, Eastern  
Division, or elsewhere within the United States, unlaw-  
fully or wrongfully made, used or sold, or caused to be  
made, used or sold, and that it is now making, using or  
selling, or causing to be made, used or sold the alleged  
2 invention set forth in said reissued letters patent No.  
12,192, or devices employing or containing the same; and  
denies that it still continues so to do, and that it is threat-  
ening to continue the said alleged unlawful acts to a  
large extent or to any extent whatsoever in defiance of  
any rights of the said complainant, and denies that the  
said complainant has suffered or is in any danger of suf-  
fering great and irreparable loss and injury, or any loss  
and injury whatsoever by the acts of this defendant; and  
denies that the complainant has been, or is now being  
deprived by any acts of this defendant of any gains or  
3 profits which it might and otherwise would have obtained;  
and denies that any gains or profits have been received and  
enjoyed by this defendant to the injury of the complainant  
through any unlawful acts or doings by the defendant;  
and denies that it has ever unlawfully made, used or sold  
any Kinetoscopic films in violation of any rights of the  
complainant, or received or enjoyed any gains or profits  
therefrom, and therefore denies that the complainant is  
entitled to the discovery prayed for in the bill of com-  
plaint.

4 XII. This defendant, further answering on informa-  
tion and belief, says that the true date of the applica-  
tion for said original letters patent No. 589,168, for the  
alleged invention or inventions which purport to be cov-  
ered by the said letters patent, was April 18, 1896, and  
that the said original letters patent and the said reissued  
letters patent No. 12,192 were and are void by reason of  
the public use and sale by the said Thomas A. Edison  
and his vendees of the said alleged invention or inven-  
tions claimed in said letters patent and in said reissued



letters patent for more than two yers prior to the date  
of his said application for original letters patent No.  
589,168. 1

XIII. This defendant, further answering on informa-  
tion and belief, says that the said Thomas A. Edison, by  
reason of the proceedings in the United States Patent  
Office in connection with the said original application  
and his acquiescence therein, abandoned the said alleged  
invention or inventions described and claimed in said  
letters patent, and is now estopped from denying the said  
abandonment and from asserting any exclusive rights under  
the said reissued letters patent. 2

XIV. This defendant, further answering on informa-  
tion and belief, says that reissued letters patent No. 12,192  
are invalid and void because the same were secured by  
fraud and in violation of the rules of the Patent Office  
and the laws of the United States in such cases made and  
provided.

XV. And this defendant, further answering on infor-  
mation and belief, says that the said reissued letters pat-  
ent in suit are void and of no effect because the alleged  
invention described and claimed therein, or substantial  
and material parts thereof, had been patented and de-  
scribed in certain letters patent and printed publications  
prior to the alleged invention or discovery thereof by the  
said Thomas A. Edison, to wit: 3

#### UNITED STATES LETTERS PATENT

	18,545, Nov. 3, 1857, to G. P. Gordon,	
	31,357, Feb. 6, 1861, to Coleman Sellers.	4
	36,395, Sept. 9, 1862, to Dayton & Kelly.	
	64,117, Apr. 23, 1867, to William E. Lincoln.	
	93,594, Aug. 12, 1869, to O. B. Brown.	
	133,394, Nov. 26, 1872, to C. A. Waterbury.	
	212,865, Mar. 4, 1879, to E. J. Muybridge.	
Reissue	9,960, Dec. 6, 1881, to Edward J. Muybridge	
	284,073, Aug. 28, 1883, to R. Schlotterhoss.	
	317,049, May 5, 1885, to Walker & Eastman.	
	353,312, Nov. 30, 1886, to W. N. Kelly.	

- 1      376,247, Jan. 10, 1888, to A. Le Prince.  
       387,500, Aug. 7, 1888, to D. I. Eckerson.  
       390,396, Oct. 2, 1888, to E. T. Potter.  
       433,776, Aug. 5, 1890, to D. I. Eckerson.  
       452,966, May 26, 1891, to W. Donisthorpe et al.  
       259,950, June 20, 1882, to H. Van Hoevenbergh.  
       279,875, June 19, 1883, to E. J. Muybridge.  
       478,663, July 12, 1892, to J. Urie, Jr.  
       491,993, Feb. 21, 1893, to Thomas A. Edison.  
       525,439, Sept. 4, 1894, to J. E. Blackmore.
- 2      525,991, Sept. 11, 1894, to Max Meyer.  
       528,140, Oct. 30, 1894, to J. E. Blackmore.  
       540,545, June 4, 1895, to R. D. Gray.  
       544,480, Aug. 13, 1895, to George Demeny.  
       546,093, Sept. 10, 1895, to O. A. Eames.  
       553,369, Jan. 21, 1896, to L. P. Thompson.  
       560,424, May 19, 1896, to A. N. Petit.  
       560,800, May 26, 1896, to C. F. Jenkins.  
       579,882, Mar. 30, 1897, to A. & L. Lumiere.

## BRITISH LETTERS PATENT

- 3    No. 2,005, dated June 8, 1874, to Henry Martin Nicholls.  
       No. 4,344, dated Nov. 9, 1876, to W. Donisthorpe.  
       No. 4,244, dated Nov. 13, 1877, to Charles Emile Reynaud.  
       No. 10,770, dated Aug. 23, 1886, to J. Urie.  
       No. 2,295, dated Feb. 8, 1889, to Charles Emile Reynaud.  
       No. 10,131, dated June 21, 1889, to W. F. Greene & M.  
           Evans.  
       No. 4,707, dated Mar. 26, 1890, to F. H. Varley.  
       No. 12,794, dated June 30, 1893, to George Demeny.  
       No. 24,457, dated Dec. 19, 1893, to George Demeny.
- 4    No. 7,187, dated Apr. 8, 1895, to B. J. B. Mills.  
       No. 18,695, dated Aug. 26, 1895, to Henri Joly.  
       No. 17,930, dated Sept. 25, 1895, to W. F. Greene.  
       No. 537, dated Feb. 22, 1860, to P. H. Desvignes.  
       No. 1,260, dated May 22, 1860, to W. T. Shaw.  
       No. 925, dated Mar. 16, 1868, to Charles B. Linnett.  
       No. 1,443, dated May 2, 1868, to J. H. Johnson.  
       No. 423, dated Jan. 10, 1888, to L. A. A. Le Prince.  
       No. 12,921, dated Aug. 15, 1889, to Donisthorpe & Crofts.  
       No. 1,647, dated April 27, 1887, to W. B. Woodbury.  
       No. 504, dated Jan. 10, 1889, to C. N. Morris.

- No. 16,785, dated Nov. 19, 1888, to W. P. Adams. 1  
 No. 3,730, dated Mar. 8, 1890, to Mortimer Evans.  
 No. 1,139, dated —, 1854, to Spencer & Melhuish.  
 No. 2,063, dated Aug. 19, 1863, to Bonelli & Cook.

### FRENCH LETTERS PATENT

- L. A. DuCos, No. 61,976, dated March 1, 1864; and certificate of addition thereto dated Dec. 3, 1864.  
 R. Schlotterhoss, No. 154,972, dated April 19, 1883.  
 E. J. Marey, No. 208,617, dated Oct. 3, 1890.  
 W. Donisthorpe & W. C. Crofts, No. 209,174, dated Oct. 28, 1890. 2  
 E. J. Marey, No. 231,209, dated June 29, 1893.  
 Bouly, No. 219,350, dated Feb. 12, 1892.  
 G. Demy, No. 233,337, dated Oct. 10, 1893; and certificate of addition thereto, dated July 27, 1894.  
 Gossart, No. 238,308, dated May 5, 1894.  
 Lumiere, No. 245,032, dated Feb. 13, 1895; and certificates of addition thereto, dated March 30, 1895, and May 6, 1895.  
 Werner, No. 248,254, dated June 18, 1895.  
 Joly, No. 249,875, dated Aug. 26, 1895. 3  
 Charles Emile Reynaud, No. 194,482, dated Dec. 1, 1888.

### GERMAN LETTERS PATENT

- No. 26,620, dated April 15, 1883, R. Schlotterhoss.

### BELGIAN LETTERS PATENT

- Henry Dumont, No. 11,130, dated July 3, 1861.

### PRINTED PUBLICATIONS

The official publications printed and published by the United States of America, by the Kingdom of Great Britain and Ireland, by the Republic of France and by the Empire of Germany, containing the specifications of the various patents above named, as existing prior to the alleged invention by Edison, of the alleged improvements described and claimed in said reissued letters patent No. 12,192. 4

An article entitled "Instantaneous Photographs," contained in the "Scientific American Supplement" for May



- 1 27, 1882, No. 304, p. 5,328, published at New York in 1882.

An article entitled "The Photographic Gun," contained in the "Scientific American Supplement" for June 10, 1882, No. 336, p. 5,351, published at New York in 1882.

An article entitled "Amateur Photographers," contained in the "Brooklyn Daily Eagle" of June 14, 1888, a daily newspaper published at Brooklyn, N. Y.

An article entitled "A Startling Optical Novelty," contained in "The Optical Magic Lantern Journal & Photographic Enlarger" for November 15, 1889, p. 44, published at London, England, in 1889.

- 2 An article entitled "Le Fusil Photographique," contained in "La Nature" for April 22, 1882, No. 464, pp. 326, 330, published at Paris, France, in 1882.

An article entitled "Photographic Camera" contained in "The Optical Magic Lantern Journal & Photographic Enlarger" for April 1, 1890, published at London, England, in 1890.

An article entitled "A Machine Camera for Taking Ten Photographs a Second," contained in the "Scientific American Supplement" for April 1, 1890, No. 746, page 11,921, published at New York, N. Y., in 1890.

- 3 An article contained in the "Photographic News" for 1890, Vol. 34, pages 157, 159, published at London, England.

An article entitled "The Bonta Telephone," contained in the "Scientific American" for August 13, 1887, page 102, published in New York, N. Y., in 1887.

An article entitled "La Chrono-Photographic," contained in the "Revue General des Sciences," issue of November 15, 1891, published at Paris, France, in 1891.

- 4 An article entitled "L'enseignement par les Jeux," contained in "La Nature," No. 448, of December 31, 1881, pages 71 to 73, published at Paris, France, in 1881.

An article entitled "Le Praxinoscope a Projection," contained in "La Nature" for November 4, 1882, pages 357 and 358, published at Paris, France, in 1882.

An article entitled "Description of a New Optical Instrument called the Stereotrope," contained in the "British Association Reports, Proceedings of the Royal Society," Vol. II., of 1860, pages 70 to 73, published at London, England, in 1860.

An article entitled "Muybridge's Zoogyroscope," con-

tained in the "Scientific American," vol. XLII., No. 23, June 5, 1880, page 353, published at New York, N. Y., June 5, 1880. 1

An article entitled "The Electric Tachyscope," contained in the "Scientific American," vol. LXI., No. 20, September 16, 1889, pages 303 and 310, published at New York, N. Y., in 1889.

An article entitled "The Zootrope," contained in the "Scientific American Supplement," vol. VIII., No. 188, August 9, 1879, page 2991, published at New York, N. Y., in 1879.

An article entitled "The Attitude of Animals in Motion," contained in the "Scientific American Supplement," vol. XIV., No. 343, July 29, 1882, pages 5469 and 5470, published at New York, N. Y., in 1882. 2

An article entitled "Mr. Muybridge's Photographs of Animals in Motion," contained in the Scientific American Supplement," vol. XIII., No. 317, January 28, 1882, published at New York, N. Y., in 1882.

An article entitled "Locomotion in Water, Studied by Photography," contained in the "Scientific American Supplement," vol. XXXI., No. 784, January 10, 1891, published at New York, N. Y., in 1891. 3

An article entitled "Anschutz's Motion Pictures and the Stroboscopic Disk," contained in the "Philadelphia Photographer," vol. XXIV., of 1887, pages 328 to 330, published at New York, N. Y., in 1887.

An article contained in the "Scientific American Supplement," vol. XIII., No. 336, for June 10, 1882, pages 5331 and 5332, published at New York, N. Y., in 1882.

An article contained in the same publication, vol. XXIII., No. 579, for February 5, 1887, pages 9243 to 9246 inclusive. 4

An article contained in the same publication, vol. XXIII., No. 580, for February 12, 1887, pages 9258 to 9260 inclusive.

An article contained in the same publication, vol. XXXI., No. 784, for January 10, 1891, pages 12,532 to 12,533 inclusive.

An article contained in the "Scientific American," vol. LVII., No. 7, for August 13, 1887, pages 102 and 103, published at New York, N. Y., in 1887.

An article contained in "Comptes Rendus," vol. 94 of

- 1 1882, pages 909 to 911, inclusive, published at Paris, France, in 1882.

An article contained in the same publication, vol. 107, October 15, 1888, pages 607 to 609 inclusive.

An article contained in the same publication, vol. 107, for October 29, 1888, pages 677 and 678.

An article contained in the same publication, vol. 111, for November 3, 1890, pages 626 to 629 inclusive.

An article contained in Wilson's "Quarter Century in Photography," page 493, published at New York, N. Y., in 1887.

2

XVI. This defendant, further answering on information and belief, says that said reissued letters patent No. 12,192 are void and of no force and effect for the reason that the said Edison was not the original or first inventor or discoverer of the alleged improvement therein described and claimed, or of any substantial and material parts thereof, and that the same was known to and used by others prior to any invention thereof by said Edison as follows, to wit:

3

At San Francisco, Cal., Brooklyn, N. Y., and elsewhere within the United States, by Edward J. Muybridge, who resides at San Francisco, Cal.

At Brooklyn, N. Y., and elsewhere within the United States, by W. G. Levison, who resides at Brooklyn, N. Y.

At Orange, N. J., and elsewhere within the United States, by William K. L. Dickson, who is now residing at London, England.

4

At Philadelphia, Pa., and elsewhere within the United States, by James W. Bonta, who resides at Philadelphia, Pa.; and others whose names and addresses are not now known to this defendant, but which this defendant prays leave to set up by an amendment to this answer when it shall have ascertained the same.

XVII. This defendant, further answering on information and belief, says that said reissued letters patent No. 12,192 are void and of no force and effect because the alleged improvement attempted to be patented thereby did not, at the date of the said reissued letters patent, or at the date of the said original letters patent, or at the date of



the said alleged invention thereof by the said Edison, involve or require invention; that in view of the state of the art as it existed at the time it did not require the exercise of inventive faculty to devise and produce the devices described and claimed in said reissued letters patent, but merely the exercise of mechanical skill; and that the said reissued letters patent did not produce any new and useful result not already known to others and already in common use by others skilled in the art of photographing and reproducing representations of objects in motion.

XVIII. This defendant, further answering on information and belief, says that the reissued letters patent here in suit are invalid for the reason that the same were unduly, unlawfully and fraudulently expanded and broadened during the proceedings in the Patent Office for the said reissue, the said Thomas A. Edison claiming in said reissued letters patent more than he was entitled to claim, and claiming an invention which was not included in the said original letters patent, the said reissued letters patent being unlawfully and unduly expanded and broadened during the said proceedings in the Patent Office with the object of covering improvements made by others subsequent to the date of the application for the said original letters patent and developments of the art subsequent to the date of the application for the said original letters patent.

XIX. This defendant, further answering on information and belief, says that for the purpose of deceiving the public the description and specification filed by the said Edison in the Patent Office in connection with his said application for the reissued letters patent in suit was made to contain less than the whole truth relative to his alleged invention or discovery, and also for the same purpose the said application described and claimed an article of which the said Edison was not the first, original and sole inventor, and that the said reissued letters patent are therefore null and void.

XX. And now this defendant, having fully answered all in singular those portions of the bill of complaint that

1 is material and necessary to answer, denies all and all manner of things in the said bill alleged which are not hereinbefore answered unto; and it prays the same benefit of the several matters and things hereinbefore alleged and set forth, as if by reason thereof it had demurred or had pleaded to the said bill; and it prays to be hence dismissed with its reasonable costs and charges herein most wrongfully sustained.

KLEINE OPTICAL COMPANY,  
By George Kleine,  
President.

2 RECTOR, HIBBEN & DAVIS,  
Solicitors for Defendant.  
KERR, PAGE & COOPER,  
Counsel for Defendant.

State of Illinois, }  
County of Cook. } ss.

George Kleine, being duly sworn, deposes and says:

I am president of the Kleine Optical Company, the defendant above named. I have read the foregoing answer and know the contents thereof, and the same is true of my own knowledge, except as to matters and things therein alleged to be stated on information and belief, and as to those I believe it to be true.

(Signed) GEORGE KLEINE.

Subscribed and sworn to before me  
this 2d day of April, 1908.

LOUIS B. ERWIN,  
Notary Public,  
Cook County, Illinois.

4 Mr. GROSVENOR: I also introduce as admissions, in order to show prior inconsistent statements made by the defendants in this case in regard to these patents, the testimony of Frank L. Dyer, February 27th, 1911, in the case of Motion Picture Patents Company, complainant, against the Independent Moving Pictures Company of America, defendant, said suit being on the Latham Patent No. 707,934; the testimony offered being page 169, Question 8; pages 170 and 171.

Mr. KINGSLEY: I object to the introduction of what purports to be the evidence of Mr. Frank L. Dyer, on

the ground that it is incompetent, immaterial and irrelevant, that it does not refer to the issues embraced in this action, that it is not the best evidence, that the only method of proving anything in this action regarding expressions of opinion on the part of Frank L. Dyer that should be followed by the petitioner, is to call Mr. Frank L. Dyer himself.

Mr. CALDWELL: I object also on the further ground that these defendants are not chargeable with that as an admission against interest, as it is not shown that Mr. Dyer had any authority to so charge them, and on the further ground that he has not been called as a witness in this case, and therefore cannot contradict any evidence that he has given, in this case.

Mr. KINGSLEY: I wish to add to my objection the further objection that this is an abuse of proceeding. That Mr. Dyer is available as a witness, and within reach of the court, and that he should be called in reference to any statements that he may make, or may have made, and be given an opportunity to explain the same and to be cross examined relative thereto.

Mr. GROSVENOR: I want it distinctly understood that this testimony of Dyer is not introduced as independent evidence, but merely under the theory of admissions.

Mr. KINGSLEY: And I wish to further object on the ground that any admission that may have been made by Mr. Dyer at any time cannot bind any of these defendants, with the possible exception of himself.

The paper offered is marked Petitioner's Exhibit No. 172 and is as follows:

**Petitioner's Exhibit No. 172.**

Q8. I show you the issue of the publication "Show World" dated April 4, 1908, and call your attention to an article on page 11, under the heading "Edison Counsel Talks of Moving Picture War." I notice that this article headed as above and also "Orange, N. J., March 28th" purports to give a statement of Frank L. Dyer, general counsel for the Edison Mfg. Co. to a Show World representative. Are you the Frank L. Dyer who gave this interview with the repre-



1   tentative of the Show World as set forth in the article to which I have called your attention?

A. I am undoubtedly the Frank L Dyer referred to, but I am not able to say whether the article in question is a correct interview or not.

Q9. You gave an interview to a representative of this paper, did you not, at or about this time?

A. I think so.

Q10. Is the account of this interview substantially correct?

2   A. Yes. My recollection is that, at that time, the two conflicting interests in the motion picture field (the Edison and Biograph Companies) spent a good deal of time in talking about their patents in the trade papers and this article appears to be one of the numerous articles that appeared in the trade press relating to these matters. I cannot say that the opinions that were expressed in an article of this kind would be as carefully considered as they might be. A good deal of the talk was largely for advertising purposes; the Biograph people pretended to sneer at our patents and it was human nature for us to sneer at theirs.

3         Mr. KENYON: All but the first word objected to as irresponsible, immaterial, volunteered and incompetent.

Q11. I notice that in this article you say, among other things, "The Latham Patent was granted August 26th, 1902, and according to the people who are now affirming its validity, it has been infringed by every one since that time." What concerns did you refer to by "infringed by every one since that time"?

4   A. The various manufacturers of moving pictures in this country who, I assumed, made use of cameras involving the Latham invention and the manufacturers of projecting machines including principally the Edison Company, S. Lubin of Philadelphia, the Motiograph Co. of Chicago, and the Powers Co. of New York.

Q12. Up to this time, had any suits been brought on the Latham Patent that is involved in this suit, No. 707,934?

A. I am not able to say. There has been no suit brought against the Edison Co. that I know of.

Q13. As counsel for that company you would have known if any suit had been brought against them? 1

A. Yes, sir.

Q14. Do you remember attending a meeting of representatives of the Edison Mfg. Co., at the Auditorium Annex in Chicago, in March, 1908?

A. I remember a visit I made to Chicago in the Spring of 1908, and I think it was in March.

Q14. You made similar public statements at that meeting, to reporters with reference to the Latham Patent, did you not? I mean, similar or of the same general character as those contained in this published interview of yours in the Show World of April 4th, 1908? 2

Mr. PAGE: Objected to as wholly irrelevant and immaterial.

A. I am not able to say, but it is not unlikely, because at that time we were just starting the Licensee Association under the Edison patents and naturally were disposed to minimize the value of any other patents.

Direct Examination Closed. 3

Defendant's counsel offers in evidence the article referred to by the witness published in The Show World of April 4, 1908, and it is marked Defendant's Exhibit, Dyer Interview and Show World of April 4, 1908."

Signature waived.

No Cross Examination.

Deposition Closed. 4

Mr. GROSVENOR: The record should show that this testimony is taken from the printed volume in the case stated.

Mr. KINGSLEY: I object to it also on the ground that it is not the best evidence. That it is not proved here by the stenographer who took the testimony.

Mr. GROSVENOR: I also offer on the same theory, the interview given in the Show World, and from the

1 record in the same case, namely, Defendant's Record, Volume 2, Exhibits, page 627, issue of the Show World of April 4th, 1908, referred to in the last exhibit, being the interview by Mr. Dyer, respecting which he testified as appears above.

2 Mr. KINGSLEY: I repeat all the objections that I have made relative to the introduction of the alleged testimony of Frank L. Dyer with respect to the interview in the Show World of April 4th, 1908, now offered in evidence, and also object further on the ground that it is hearsay and not binding in any sense upon any of the defendants herein.

The paper offered is marked Petitioner's Exhibit No. 173, and is as follows:

**Petitioner's Exhibit No. 173.**

DEFENDANT'S EXHIBIT, DYER INTERVIEW AND  
SHOW WORLD OF APRIL 4, 1908.

April 4, 1908. THE SHOW WORLD. 11

3 EDISON COUNSEL TALKS OF MOVING PICTURE  
WAR.

Orange, N. J., March 28.—Frank L. Dyer, general counsel for the Edison Manufacturing company, upon being asked by a SHOW WORLD representative if he cared to make any further statement in reference to the moving picture situation, said:

4 "My attention has just been called to a statement issued by Mr. Kleine and appearing in THE SHOW WORLD of March 21. I have nothing to retract from my original characterization of the Latham patent as 'a joke in the business.' The Latham patent was granted August 26, 1902, and according to the people who are now affirming its validity it has been infringed by everyone since that time. Why was it not litigated to a final hearing as was done with the Edison camera patent? Obviously, because its original owners thought so little of its validity that they did not care to incur the expense of a suit.

"I have been familiar with this patent ever since its issue, and a gentleman very closely connected with the corporation by which it was originally owned is a very close personal



friend of mine. To oblige him, I several times looked into the Latham patent in the hope that I might be able to persuade myself that it possessed value, but I could not see anything in it. Furthermore, when Mr. Latham's application was pending in the patent office he became involved in interference with Thomas Armat, and the Court of Appeals of the District of Columbia decided in that interference that Armat and not Latham was the first inventor. As a result of this controversy all that Latham was able to obtain from the patent office was a very limited patent, and even as to this limited subject matter I regard the patent as utterly invalid.

ADMITS KLEINE IS CORRECT; BUT—

“Mr. Kleine's statement that the suit on the first reissue of the Edison film patent was withdrawn is correct. Two reissues were granted on the same day, one on the camera and the other on the film, and two suits were simultaneously brought on these patents against the American Mutoscope & Biograph company. It was subsequently discovered that a slight clerical error had been made in the first reissue patent for the film, which had to be corrected by again reissuing it. It was for this reason that the suit on the first reissue of the film patent was discontinued. The procuring of the second reissue necessitated delay, and it was therefore decided to proceed independently with the suit on the camera patent. The camera patent, having been sustained by the Court of Appeals, carries with it a very strong presumption in favor of the patent on the film. Mr. Kleine appears to believe that I have doubts concerning this film patent, but in this he is mistaken, and the suits against him are to be pressed with every possible vigor. There are always short delays in the starting of litigations of this sort, but when a suit is once at issue it can be speedily terminated. This is what I propose to do.

“THE FACTS” PAMPHLET UNFAIR.

“My attention has also been directed to a small pamphlet entitled ‘The Facts,’ issued by the American Mutoscope & Biograph company. This is so obviously unfair that it hardly requires serious consideration. The Court of Appeals did say, in referring to Mr. Edison, that ‘he was not the inventor of the film’ but in this statement they did not use the word

1 'film' in its present acceptance. They meant simply that Mr. Edison was not the inventor of the original negative film on which the moving pictures are taken, because that film had been independently developed by the Eastman Kodak Company. The court has nowhere said that Mr. Edison was not the inventor of the modern moving picture film, and the patent office has granted him a patent on that very thing. It should also be noted that the patent on the film was reissued by the patent office after the decision of the Court of Appeals and when the patent office had before it the entire record and all of the moving picture art.

2 "Finally, I observe that in this pamphlet the statement is made that the Edison company and others 'have been compelled to adopt the camera of the Latham patent No. 707,934,' which is the patent previously referred to. It is sufficient to say as to this statement that the Latham patent relates to a projecting machine and in no way refers to a camera."

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3 Mr. GROSVENOR: I next offer in evidence exemplified copy of the certificate of incorporation of the General Film Company, incorporated under the laws of the State of New Jersey, dated February 10th, 1910.

Mr. CALDWELL: That is objected to as incompetent, immaterial and irrevelant, and on the ground that the defendant General Film Company in this case is not the General Film Company referred to in this certificate of incorporation just offered in evidence.

4 Mr. KINGSLEY: I object to it on the same grounds. That it is not a true copy of the certificate of incorporation of the defendant herein, as will appear by an examination of the complainant's petition.

Mr. GROSVENOR: The certificate of incorporation of the defendant herein is already in evidence. This certificate being dated two months earlier, is introduced as one of the steps showing the beginning of the conspiracy set out in the petition in this case, and that the same was entered upon some time earlier than April, 1910.

Mr. KINGSLEY: Same objection.

The paper offered is marked Petitioner's Exhibit No. 174, and is as follows:

**Petitioner's Exhibit No. 174.**

1

THIS IS TO CERTIFY that We, THE UNDERSIGNED, do hereby associate ourselves into a corporation under and by virtue of the provisions of an act of the Legislature of the State of New Jersey entitled "An Act Concerning Corporations (Revision of 1896)" and the supplements thereto and acts amendatory thereof, for the purposes hereinafter mentioned, hereby claiming for ourselves all the rights and privileges now or hereafter granted by the Laws of the State of New Jersey to corporations, and to that end we do by this our certificate set forth:

2

FIRST.—The name which we have assumed to designate such corporation and to be used in its business and dealings is "GENERAL FILM COMPANY."

SECOND.—The location of the principal office of the corporation in this State is at No. 15 Exchange Place, Jersey City, in the County of Hudson. The name of the agent therein and in charge thereof upon whom process against the corporation may be served is Charles L. Carrick.

3

THIRD.—The objects for which this corporation is formed, are to buy, sell, or to otherwise acquire or dispose of Letters Patent and licenses under Letters Patent for inventions pertaining to the production and use of photographic or other negatives and photographic or other positives, of objects at rest and objects in motion; to manufacture, buy, use, sell, or to otherwise acquire or dispose of, or to lease, apparatus, materials, processes and rights, pertaining to the production and use of photographic or other negatives and photographic or other positives, of objects at rest and objects in motion; to manufacture, buy, use, sell, or to otherwise acquire or dispose of, or to lease, photographic or other negatives and photographic or other positives, of objects at rest and objects in motion; to manufacture, buy, use, sell, or to otherwise acquire or dispose of, or to lease, apparatus and materials of every character used in exhibitions, entertainments, motion picture shows and theatrical performances, and in equipping theatres, halls and similar places of amusement, entertainment and instruction; to buy, lease, operate, sell, or to otherwise acquire or dispose of, motion

4



- 1 picture or other theatres, halls and places of amusement; to purchase and to hold such real and personal property as shall be lawful and adapted to the business of the corporation; to mortgage, lease, sell or dispose of by agreement or otherwise, and to convey, any or all of the real or personal property of the corporation.

This corporation shall also have power to buy or otherwise acquire, and to hold, sell or otherwise dispose of, the stocks, bonds, notes and other evidences of indebtedness of any domestic or foreign corporation, and to issue and deliver its stock, bonds or other obligations in payment or exchange for stock, bonds and other obligations of other corporations.

- 2 This corporation shall also have power to conduct its business in all its branches and to have one or more offices and to hold, lease or convey real or personal property outside of the State of New Jersey and in all other States and in all foreign countries to which the business of the Company may be hereafter extended, and to borrow money and to do any acts to protect and improve the business of the corporation and enhance the value of its property.

- 3 **FOURTH.**—The total authorized capital stock of this corporation shall be two million, five hundred thousand (2,500,000) dollars, divided into twenty-five thousand (25,000) shares, each of the par value of one hundred (100) dollars.

**FIFTH.**—Fifteen thousand (15,000) shares of the capital stock of this corporation shall be preferred stock, and ten thousand (10,000) shares shall be common stock.

- 4 **SIXTH.**—The preferred stock of this corporation shall receive from the net earnings, a seven (7) per cent. annual cumulative dividend, before any dividends are paid on the common stock, and in the distribution of the assets of this corporation, the preferred stock shall be paid in full at par, and shall receive all accrued dividends, before the common stock shall be entitled to participate in the distribution of the assets.

**SEVENTH.**—Holders of preferred stock shall not be en-

titled to vote such stock at the meetings of stockholders of this corporation. 1

EIGHTH.—At all elections for Directors, cumulative voting shall be permitted and each stockholder of record shall have the right to vote in person or by proxy, as many votes as the product of the number of shares of common stock recorded in the stockholder's name, multiplied by the number of Directors to be elected, and each stockholder may cast all such votes for one candidate or distribute them in favor of two or more candidates.

2

NINTH.—Any officer of this corporation may be removed from office and his office declared to be vacant, by the affirmative vote of not less than two-thirds (2-3) of all the Directors, at any time except during the existence of a vacancy in the Board of Directors.

TENTH.—The amount of capital stock with which this corporation shall commence business, is ten thousand (10,000) dollars.

ELEVENTH.—The names and post office addresses of the incorporators and the number of shares of capital stock subscribed for by each, are as follows: 3

Names and Post Office Addresses.	Number of Shares.	
Harry M. Gough, Glen Ridge, N. J.,	50	
Guernsey R. Jewett, 505 Sixth Street, Brooklyn, N. Y.,	10	
Willoughby J. Kingsbury, 3458 Broadway, New York, N. Y.,	10	
Emil O. Mann, 269 West 131st Street, New York, N. Y.,	10	4
William G. Hovey, Woodmere, L. I.,	10	
Harry J. Mullineaux, 509 Goepp Street, Bethlehem, Pa.,	10	

TWELFTH.—The existence of this corporation shall begin on the day on which these Articles of Incorporation are filed in the office of the Secretary of State of the State of New Jersey, and shall continue for a period of fifty (50) years from that date.

1 IN WITNESS WHEREOF, we have hereunto set our hands and seals this seventh day of February, nineteen hundred and ten.

Harry M. Gough.	(L. S.)
Guernsey R. Jewett.	(L. S.)
Willoughby J. Kingsbury.	(L. S.)
Emil O. Mann.	(L. S.)
William G. Hovey.	(L. S.)
Harry J. Mullineaux.	(L. S.)

2 In the presence of  
Frederick E. Kessinger.

State of New York, }  
County of New York, } ss.:

BE IT REMEMBERED that on this seventh day of February, 1910, before me, a Notary Public in and for said County and State of New York, duly commissioned and sworn, personally appeared Harry M. Gough, Guernsey R. Jewett, Willoughby J. Kingsbury, Emil O. Mann, William G. Hovey and Harry J. Mullineaux, who I am satisfied are  
3 the persons named in and who executed the foregoing certificate of incorporation, and I having first made known to them the contents thereof, they thereupon severally duly acknowledged that they signed, sealed and delivered the same as their voluntary act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office the day and year first above written.

Frederick E. Kessinger,

[SEAL.]

Notary Public,  
New York County.

4 State of New York, }  
County of New York, } ss.:

I, WILLIAM F. SCHNEIDER, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of Record, DO HEREBY CERTIFY, That Frederick E. Kessinger, whose name is subscribed to the Certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such proof and acknowledgment a Notary Public in and for said County, duly commissioned



and sworn, and authorized by the laws of said State to take acknowledgments and proofs of deeds or conveyances for land, tenements or hereditaments in said State of New York. And further, that I am well acquainted with the handwriting of such Notary Public, and verily believe that the signature to said certificate of proof or acknowledgment is genuine. 1

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County, the 7 day of Feb. 1910.

WM. F. SCHNEIDER, 2  
Clerk.

[SEAL.]

ENDORSED:

"RECEIVED in the Hudson Co., N. J. Clerk's office 9' Feby. A. D. 1910 and Recorded in Clerk Record No.—— on Page ——

JOHN ROTHERHAM,  
Clerk."

"FILED AND RECORDED Feb. 10, 1910.

S. D. DICKENSON,  
Secretary of State."

### STATE OF NEW JERSEY 3

Department of State.

I, David S. Crater, Secretary of State of the State of New Jersey, do hereby Certify that the foregoing is a true copy of the Certificate of Incorporation of "GENERAL FILM COMPANY" and the endorsements thereon, as the same is taken from and compared with the original filed in my office on the Tenth day of February, A. D. 1910, and now remaining on file and of record therein.

In Testimony Whereof, I have hereunto set my hand and affixed my Official Seal at Trenton, this Fifth day of April, A. D. 1913. 4

[SEAL.]

DAVID S. CRATER,  
Secretary of State.

Mr. GROSVENOR: I offer in evidence now Exhibit No. 9, and ask that it be printed in the record at this place, and numbered Petitioner's Exhibit No. 9, it being one of the circulars identified by Mr. Marvin.

1

**Petitioner's Exhibit No. 9.****MOTION PICTURE PATENTS COMPANY**

10 Fifth Avenue, New York City.

(Officers listed.)

February 5, 1909.

To Licensed Exchanges:

**LIST OF LICENSED EXHIBITORS.**

2

Owing to the enormous clerical difficulties of handling a great mass of applications and the delay occasioned by the mail from different points, we have been unable to prepare complete lists of licensed exhibitors up to this time, but you will receive from us before February 10th, a list of those of your customers who have applied for licenses to cover their theatres.

3

Upon receipt of this list, please notify your customers, where their names do not appear on the list of licensed theatres, that their service will be discontinued on Saturday, February 13th, unless their application, accompanied by a remittance of \$10.00 to cover the license fee, has been forwarded to the Patents Company by that date. We beg to call your attention to the following clause in your contract with this Company which will be rigidly enforced:

4

"12. After February 1st, 1909, the Licensee shall not sub-lease any licensed motion pictures to any exhibitor unless each motion picture projecting machine on which the licensed motion pictures are to be used by such exhibitor is regularly licensed by the Motion Picture Patents Company, and the license fees therefor have been paid; and the Licensee shall, before supplying such exhibitor with licensed motion pictures, mail to the Motion Picture Patents Company, at its office in New York City, a notice, giving the name of the exhibitor, the name and location of the place of exhibition, together with the date of the commencement of the service, all in a form approved by the Licensor."

To avoid any misunderstanding, we call your attention to the fact that any theatre which has applied to this Company for license is entitled to use licensed film until we

advise you to the contrary. The exhibitor's license covers all projecting machines purchased before February 1, 1909, which the exhibitor uses in the licensed theatre, and such machines continue to be covered by the license so long as the theatre uses the licensed film and pays the required fees. The exhibitor may not use any machine purchased after February 1, 1909, to show licensed film unless it bears the official license plate of the Patents Company. 1

### EXCHANGE LETTER HEAD.

All licensed exchanges should arrange at once to place in a conspicuous position on their letterheads, a reference to the licensees of the Patents Company, containing substantially the following information: 2

"This Exchange is licensed by the Motion Picture Patents Company and furnishes an exclusive licensed service, using only the films made by the following licensed manufacturers:

American Mutoscope & Biograph Co., Edison Manufacturing Company, Essanay Film Manufacturing Co., Kalem Company, George Kleine, Lubin Manufacturing Co., Pathe Freres, Selig Polyscope Co., Vitagraph Company of America." 3

### RELEASE DAY.

The definition of "release day" will hereafter be considered to be as follows: The release day of each film issued by the licensed manufacturers is the first day upon which the film becomes the property of the exchange, and is the first day upon which the film may be used, handled, controlled, shipped, forwarded or delivered for use by the exchange receiving it from the manufacturer. The release day begins at 8 A. M. upon the day designated by the manufacturer as the release day for each film. 4

### MOTION PICTURE PATENTS COMPANY.

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Mr. GROSVENOR: Now, what is your pleasure in regard to Mr. Swaab?

Mr. KINGSLEY: I would like a ruling from the Court as to whether Mr. Swaab is to answer that question or not.



1       A recess was taken for 15 minutes until counsel were able to have United States District Judge Ray hear them, whereupon the following proceeding occurred before Judge Ray:

**Certification of Question Before Judge Ray.**

2       Mr. KINGSLEY: This is the proposition, your Honor, briefly. The Government is the complainant in a suit against the manufacturers of motion pictures, and against the Motion Picture Patents Company and the General Film Company. There are some ten corporations defendant. The Government has proved by a witness named Swaab of Philadelphia, who owns a rental exchange there, that at a certain time, he was offered \$37,000 for his exchange by the General Film Company of New York; that a verbal agreement was reached, and that subsequently this agreement was not carried out, and that later on, some weeks afterwards, his license under the patents was cancelled. He claims that oppressive measures were taken against him. Among other things that he says  
3       were done, was the institution of some ten replevin suits by the manufacturers of motion pictures in this country, which he says were instituted simultaneously. These pictures were taken away from him, and his business was greatly damaged. Now, in the cross examination it transpires that some eighteen months afterwards, he sold his business and entered into a new arrangement. He parted with a half interest in his business to the new concern, and on cross examination I have asked him how much he sold his business for, and at this point, I would ask the Examiner, if he is here, to read the colloquy that then  
4       occurred.

Mr. CALDWELL: Before the Examiner reads that, I would like to call your Honor's attention to the fact that this proceeding is pending in the United States District Court for the Eastern District of Pennsylvania, and this motion is now addressed to your Honor, as the Court of ancillary jurisdiction.

Judge RAY: There is not any question of the power of the Judge, wherever he is, to make the order?

Mr. CALDWELL: Except that a somewhat different principle is involved. That a court of ancillary jurisdiction does not as a rule pass upon the materiality of the questions which the witness is to answer.

Judge RAY: That is true, but if the courts here would not, you would have to go over there, wouldn't you?

Mr. KINGSLEY: The witness claims that the price at which he was to sell his property was too small. He claims that he was injured in his business. He has offered in evidence a judgment he has recovered against the Lubin Company for \$1,800 for injuries sustained in his business. We claim that that question is absolutely material to the issues involved, as to whether his business was hurt to the extent he says it was.

Mr. GROSVENOR: I think it might be well for me to state why it is not material, before the answer is read. The charge in this case is that the General Film Company, one of the defendants, started to monopolize the rental exchange business, and in conjunction with the Patents Company, it bought out all the rental exchanges, or if the rental exchanges did not sell out, had their licenses cancelled by the Patents Company. Now, the testimony of Mr. Swaab is that he was a rental exchange, doing business as a rental exchange in Philadelphia. That was in the year 1910, and there were three or four rental exchanges there. That each of those was either bought out by the General Film Company or its license was cancelled by the Patents Company, until he alone survived.

Now, the Government wanted to show that he was asked to sell out, and we called Mr. Swaab, and he testified that he saw these rental exchanges put out of business either by purchase or having their licenses cancelled, and that one of the officers or Directors of the General Film Company had it suggested to him that he come over to New York and see the General Film Company about selling his business. So that we proved that Mr. Swaab came over here, that he went up to the General Film Company, that they made a proposition to buy his property, that the proposition fell

1 through, that negotiations lasted three or four months, and then after renewed negotiations, Mr. Swaab's license was cancelled, and he was put out of business as a licensed rental exchange. That is in December, 1910. That is all we proved—the effort to get Mr. Swaab's business.

Now, the question that he was asked related not to that transaction, not the transaction in December, 1910, but to a subsequent one two years later, and I will explain what the testimony shows.

2 Mr. Swaab then no longer did business as a rental exchange, as a licensed rental exchange. He eked out a miserable existence for two years, handling independent films, and only independent films, having no business at all with the General Film Company, and no business with the Patents Company or any of these manufacturers.

In the meantime, there is a great deal of litigation between him and the Patents Company in connection with the cancellation of his license in December, 1910.

3 Now, we come down to the question. Mr. Swaab says he is no longer in business. That a few months ago, in the latter part of 1912, in October, 1912, that is, two years after the original transaction, he disposed of his business. The business was not business with the defendants, but simply handling independent films. That he sold his business to some people who were in no way related to the Patents Company or the General Film Company, and counsel, in bringing this out in cross examination, pursued the subject to show not only that he is now out of business and that he went out of business two years after his license was cancelled, but they want to know what he got for his business when he sold out, and he has objected on the ground—of course I am not his counsel—he has objected on the ground that that is prying into his personal affairs, and I objected on the ground it is immaterial and irrelevant.

4 Judge RAY: Whom do you represent?

Mr. GROSVENOR: I represent the Government, and not the witness, who is from Philadelphia, and without any counsel here. Of course, to us it makes no difference.



Judge RAY: You represent the Government, and the Government brings this suit to dissolve the trust or combination? 1

Mr. GROSVENOR: Exactly.

Judge RAY (turning to Mr. Kingsley): You represent whom?

Mr. KINGSLEY: I represent the defendants, Motion Picture Patents Company, Biograph Company, Armat Moving Picture Machine Company, and two of the individual defendants.

This question goes precisely to the question whether he eked out a miserable existence or not, or whether he was making money. It goes to the whole question of the theory of this case, whether we have done him any damage or not so far as he is connected with the case, and I would like the Examiner to read to your Honor just what occurred at the time this question was put. 2

Mr. GROSVENOR: We claim it has no bearing on the issues.

Mr. CALDWELL: The question is material in that it relates to a sale of exactly the same business that the Government brought out in its direct testimony. After all, it is an exchange business, conducted in a somewhat different way from which he had formerly conducted it. Instead of as a licensed exchange, as an independent exchange. But we claim, your Honor, that quite independent of the materiality of this question, the uniform practice is that the court of ancillary jurisdiction, unless the question is clearly privileged or scandalous or objectionable on that ground, that the court will direct the witness to answer and let the trial court, the court of original jurisdiction, pass upon its materiality at the hearing. 3 4

Judge RAY: That would be all right as between the parties litigant. That would not protect the witness.

Mr. CALDWELL: The ancillary court will determine whether the question is privileged or not, or whether it involves the disclosure of trade secrets, or anything of that sort.

Judge RAY: Why does the witness dislike to an-

1       swer? What is the ground upon which he dislikes to answer?

The Witness (Swaab) : I claim, your Honor, that it is my personal and private business. That is the only reason.

Mr. KINGSLEY : We claim, your Honor, that it goes directly to the question of whether he has been injured by this corporation, or not.

2       Mr. CALDWELL : He did not have any objection to disclosing his personal and private business when he was asked on direct examination, "How much did you agree to take from the General Film Company?" and answered "Thirty-seven thousand dollars."

3       Judge RAY : Whether in the Trial Court or the Court of ancillary jurisdiction, of course if it appears that the question and its answer are pertinent and proper, that the answer would have some bearing on the question at issue, then he should be instructed to answer. If, on the other hand, it is outside of the real issue and goes into a person's private business or concerns and the answer could have no bearing upon the real issue, then of course he should not be required to answer.

Mr. CALDWELL : We claim that it has a bearing, if the direct testimony of the Government as to what he has agreed to sell originally for, is material and has a bearing.

4       Mr. GROSVENOR : We simply showed that they called him to New York and made him this offer of \$37,000. That the thing fell through in 1910. Now, what bearing does the question asked about a transaction two years later, with entirely different parties, another business which he had worked up in two years, in an entirely different subject matter, in films manufactured by different parties, have? Now he sells out to different persons, and they ask him, "What did you get for your business when you sold it out?" What relation has that to my question, which was directed to the affairs in 1910, and which were simply for the purpose of showing that this General Film Company and the Patents Company not only got every business there in Philadelphia, but when he was left, they called him to New York and asked

him to sell out, and they made him that offer of \$37,000. That is all there was on that question. 1

Mr. KINGSLEY: It has this relation, Mr. Grosvenor. That you say this man has eked out a miserable existence up to the time he sold out. You say we have damaged him. You say that we have oppressed him. We propose to show, if we can in our cross examination, that we have done nothing of the sort. If we have, and it appears from his answer, so much the worse for us. We are willing to run the risk. If he has continued the business in the same place and sold it out for a larger sum than he was willing to sell it for at one time, it has a bearing on this particular proposition, and it shows that the defendants in this case did not injure him in the way he wants the Court to believe. That is the reason it is material and pertinent, and that is the reason we have a right to ask him. You have brought your proof down to today. 2

Mr. GROSVENOR: You are getting facts to assist you in other suits, and these facts are in no way material here.

Mr. KINGSLEY: And you have brought the judgments in those other suits into this case, and put them on the record. 3

Mr. GROSVENOR: You have prevented this man from getting your goods. What difference does it make to you for what he was able to get his business sold, which was in selling other men's goods?

Mr. KINGSLEY: If he says we have injured him in doing that, we have a right to know how much.

Mr. CALDWELL: He says we put him out of business.

Mr. GROSVENOR: He builds up a business in an entirely different line. You want to know how much he got for that different business, and he claims it is persecution to make him reveal his private and personal affairs. 4

Judge RAY: Another business, you say. What do you mean by "another business"?

Mr. GROSVENOR: This: In 1910, and for a number of years prior thereto, this witness had been doing business as a rental exchange or jobber selling films. Now, under the terms of the so-called license,



1 he could rent out only the films made by the ten  
manufacturers who are the defendants in this suit,  
and he was dealing in no other films. In December,  
2 1910, they cancelled his license, after he had refused  
to sell out. What does that mean? It means that  
after December, 1910, he could not get any of the  
films of those ten manufacturers. He continued in  
the film business, but he had to get films from others,  
from outside sources.

Judge RAY: He could not get the films, the kind  
of films, or, if not the same kind, he could not get  
3 them of the same people that he had been dealing  
with. That is what you mean?

Mr. GROSVENOR: Exactly.

Judge RAY: Let me state it and see if I have got  
it fully. You claim that they tried to buy him out,  
and he would not sell out. And that then somebody,  
someone closed the doors, these people that he had  
been accustomed to dealing with, closed the doors  
against him?

Mr. GROSVENOR: Exactly.

4 Judge RAY: So that he was then out of business?  
That is what you claim?

Mr. GROSVENOR: Yes.

Judge RAY: Is that where you stopped?

Mr. GROSVENOR: That is where we stopped. We  
stopped right there. We did not pursue the subject  
after that period, except to the extent that we showed  
as part of their acts toward him, that when they can-  
celled his license, by which I mean when they stopped  
letting him have these sources of supply which you  
have just described, that they brought a lot of suits  
against him, replevin suits to replevy the goods which  
4 were in his store. After that, we rested—

Judge RAY (interrupting): The goods that he had  
purchased?

Mr. KINGSLEY: Rented.

Mr. GROSVENOR: The goods which under the terms  
of the contract, he had rented from them. We stopped  
with that transaction. Now, they have on cross ex-  
amination shown that he, after that, continued in  
business by getting the films of others, and then he  
went out of business two years later, that is, he is

not in the business of handling films of these other manufacturers. And they asked him now, "What did you sell out your business for, this new business, last October"? 1

Judge RAY: Now, let me state that latter part so as to be sure that I understand, and there will be no disagreement about it. You stopped at the point where they had cancelled his license or licenses, where they refused to let him have more goods under his licenses, and where that was followed up by their taking away from him, through suits or legal process in some way, the goods which theretofore had been licensed to him? 2

Mr. GROSVENOR: Yes.

Judge RAY: Now, with that, you say you stopped?

Mr. GROSVENOR: Yes. As I recall from the direct examination, it was three or four months ago, and that is where we stopped.

Judge RAY: Then you say the defendants here take up the cross examination at that point and show that after these occurrences to which I have just called attention, the witness built up another business of obtaining—in the same general line, of course—but of obtaining his films and goods, whatever they were, from other dealers, that they not only showed that, but showed that after he had built up this business, he sold out? 3

Mr. GROSVENOR: Yes.

Judge RAY: And now, having showed by him that he sold not only the establishment of the new business, but that he sold out, they now want to know how much he sold out this business for?

Mr. GROSVENOR: That describes it perfectly, as I understand it. 4

Mr. KINGSLEY: That describes it, your Honor, but with this exception. In the replevin suits we only got back a portion of our films. He had a large number of them. We got back something like 400. He has admitted on cross examination that he had at least 400 more that he has never returned. They are a part of the business which he continued. They were a part of the business which he built up during this period when Mr. Grosvenor says he was eking out

- 1 a miserable existence. They were in his possession all the time, and at the time of the trial of one of these replevin suits where judgment was entered, which was put on record by Mr. Grosvenor. This matter has been carried far beyond the date of the replevin suits. It has been carried to the date of the judgment, and the implication and the argument running through this testimony is that we have irreparably injured him. He says in his testimony that he lost all his customers because of what we did. We claim he did not lose all of his customers. That he
- 2 kept a large percentage of them. We claim we have not injured him in any such extent or in the way he says we have. We claim this answer should be put on the record so that we can have the facts pertinent to this matter. If we have oppressed him or injured him, or caused him to lose a lot of money, let us know it. Let us have something definite instead of mere generalities on the part of this interested witness, because he is an interested witness.

- 3 Judge RAY: Let me say this. In such a suit as this, to dissolve what the Government claims to be an illegal combination, of what consequence is it, or of what materiality is it whether this man, driven out of business in the way in which he says he was, whether he thereafter eked out a miserable existence or did not?

Mr. KINGSLEY: But he was not driven out of business. That is what we want to show, that he was not driven out. That he kept on and did business and made money.

- 4 Judge RAY: Well, leave it there. Admit that he was. Take the broad assumption that he was. Of what materiality is it, Mr. Grosvenor, whether he eked out a miserable existence or not?

Mr. GROSVENOR: I say it makes none. It has no materiality.

Mr. KINGSLEY: The Government presents that issue.

Mr. GROSVENOR: Not at all.

Mr. KINGSLEY: You just said so here.

Mr. GROSVENOR: Whether he has prospered or not, has no bearing. And whether he got a large sum for



selling out his business has no bearing on the question. 1

Judge RAY: That is the way it struck me.

Mr. GROSVENOR: That is the reason, when the witness urged himself that to reveal that figure that he received when he disposed of his business would be disclosing his personal affairs, it seemed to me—

Judge RAY (interrupting): But if you, Mr. Grosvenor, make it a material part of the inquiry what happened to him after he was driven out of business—

Mr. GROSVENOR (interrupting): I have stated we did not go into that on the direct examination. 2

Judge RAY: If you make that an issue, then it would present another phase.

Mr. CALDWELL: Well, the Government has made that an issue all through this record.

Mr. KINGSLEY: Let me prove it by reading a little in the direct examination.

Judge RAY: Let Mr. Grosvenor tell me first what his position is on that.

Mr. GROSVENOR: My position is, whether that man lost money or did not lose money by the treatment he received, is immaterial. That the point is this: We are charging an attempt to monopolize, an attempt to buy out or put out of business everybody doing that business, and as I said, and as your Honor has recited the facts, we have shown that Swaab was the last rental exchange, the last licensed rental exchange doing business. That they called him to New York and asked him to sell out. Now, whether his business at the time that he was asked to sell out was prosperous or not prosperous, whether he was successful or not successful, is not directly material. Now, they did ask him—the question was given, “What did they offer”? Thirty-seven thousand dollars they offered him. 3

Now, in order to show in part the arbitrary character of the offer, in other words, the power of this combination, which could put a man out of business or let him stay in, as they wished, I asked him what were his profits, or “What business were you doing at the time they made that offer?” and he said, “Something like thirty-five thousand dollars a year.” 4

1 Mr. KINGSLEY: Twenty-five thousand dollars.

Mr. GROSVENOR: But that was, your Honor will recall, in 1910. Now, what bearing the question has, what did he sell out his business in 1912 to the other parties for, I am unable to say. Sold it out to different parties, and a business dealing in different things. We proved that they did put him out of business, so far as the licensed films were concerned.

2 Mr. KINGSLEY: If your Honor will permit me to read just two questions and answers from the direct examination of this witness, you will see the point that I am trying to make.

“Q. What became of your customers? A. They left and went to the other exchanges. The other, as we called them, trust exchanges.”

Mr. GROSVENOR: What page?

Mr. KINGSLEY: 826.

“Q. Have you brought any suits against these persons for their action on that day? A. I contested their action, yes, sir.

3 “Q. And how many suits did you bring against these ten manufacturers for their action on this day? Please answer the question. A. If you will permit me to explain in my own way; perhaps I do not understand your legal lore. They issued these ten writs of replevin against me, and I am contesting their action now. I am really the defendant in these cases. They are the plaintiffs.

“Q. Has one of these suits been tried? A. Yes, sir.

“Q. What was the verdict, if any, rendered in that case? A. \$1,800, last May.”

4 Bringing it down to May, 1912. It was the following October that he sold out.

Mr. GROSVENOR: This testimony was given two months ago. Or three months ago.

Mr. KINGSLEY: I know; but that was May, 1912, and he sold out in October, 1912.

Judge RAY: Well, I don't see any particular connection between the trial of the replevin action, because the trial may have taken place a year or more afterwards, and of course the verdict in that case would be rendered upon the conditions and the rights of the parties existing back at the time when they

claimed to take the property away from him. When they started in to do it. 1

Mr. KINGSLEY: Mr. Grosvenor put it in.

Judge RAY: If he was thrown out of business, I really cannot see, the way Mr. Grosvenor states this case, I cannot see any possible materiality that his evidence would have on the issue presented. Now, if you can make it plain to me where there is any connection between his selling out of this new business which he built up, and the issues in this case, I might look at it differently. In other words, put it in this way, so that you will get my idea, as it is drifting through my mind— 2

Mr. KINGSLEY (interrupting): I think I can grasp it.

Judge RAY: On the Government's suit to dissolve a combination, where they claim that an effort was made to drive men out of business, and it was finally successful, what relevancy is the amount of damage done to that man driven out of business, to each one of them? Supposing they buy them out? Supposing, in forming their combination, they buy every one out, and there is no driving out about it? Is the combination formed in that way, by buying everybody out; is it any the less illegal? 3

Mr. KINGSLEY: That question depends, of course, on whether it is illegal or not. We contend here that all that we have done is legal. We contend that all the facts and circumstances regarding these various transactions should be brought out fully on the record, just as fully in cross examination as they are on direct examination. If the Government, in examining a witness, goes to the extent of following along his business after a certain act has been done by these manufacturers or by the Patents Company, which the Government claims to be illegal, we claim that under all the rules of cross examination—and, of course, there is some latitude in cross examination, even in a government suit—we claim that we have the right to interrogate him fully regarding these matters. If he puts on the record a judgment in respect to a replevin suit, we have a right to show whether we subsequently reversed that replevin suit judgment, as we have done. 4



- 1 And if he puts on the record a statement that he was driven out of business, and we find he was not, and that he continued in business at the same place, weeks and months, and a year and a half afterwards, and that he continued in business with a portion of the property which he leased from us and never returned, and which he admits on his cross examination he never returned and never gave back, I say if he admits all these things, and kept right on in that business and finally sold it out—then the question of what he sold it out for becomes material, especially if he claims that the price that we discussed with him was a wrongful price, and one that we tried to force upon him. The reason that he gives for not carrying out the contract to which he had verbally agreed is that he could not get a written stipulation. We believe that the reason he did not carry it out was that he had a better offer. That it was more profitable for him to continue as it was—and it becomes very material under all those circumstances. This is either an act of oppression or it is not, and we are entitled to some latitude to show whether it was or not, because this case, no matter how large it is, or no matter how small it is, is made up of testimony regarding individual acts, and each one of those individual acts is of vital importance, and should be probed within reason.
- 2
- 3

Judge RAY: Does he admit that when he sold out, that he turned over and sold this property, these films, that you claim?

- Mr. KINGSLEY: No. He says that up to October he had made no accounting of these films, and he is quite careful to say that when he sold out he did not turn them over. He said he wore them out, or something of that sort. But whether he did or not, they were a part of his business, and of the business he carried on. The same business. The same business exactly. Just the same as if a man started selling one kind of collars and then took another kind of collars—
- 4

The Witness (Swaab) (interrupting): It was like building the business up again from the very beginning. I had to get a new set of customers.

Mr. KINGSLEY: That is just the question; that is just what we want to find out. 1

Mr. GROSVENOR: And this new business is the one you sold out, and the one they asked you the price of?

The Witness (Swaab): Yes, sir.

Mr. KINGSLEY: It was not a new business. It was the same business. Carried right on continuously. And with our property in his possession.

Mr. GROSVENOR: In view of my knowledge of the affairs of this witness and the number of lawsuits he was harrassed with, and the arbitrary and sudden way in which his business was interfered with, now, after he has continued in business, or gone out of business— 2

Judge RAY (interrupting): Now, let me inquire. Suppose his answer should be that his old business there was worth—how much to him? Fifty thousand a year?

Mr. KINGSLEY: He said he was making twenty-five thousand a year.

Judge RAY: Twenty-five thousand. Supposing he should say he built up this new business, getting his films elsewhere, and it was worth a hundred thousand dollars. Supposing he should say he sold it out for one hundred and twenty-five thousand dollars. Of what advantage would that be to you, and what bearing would it have—what possible bearing would it have upon the acts and conduct of which the Government complains? 3

Mr. KINGSLEY: It has this bearing—that we claim that the Government's contention of our monopoly is wrong. That what we did we had a right to do. That we have not oppressed him in any way. That is, he was refused these licensed films at a certain time, and he was still able to go on and do business, and he got other films, and in connection with the licensed films, which he kept and never returned, he was able to go on and do business, and that he lost no money to amount to anything. If he explains it on the theory that you suggest, he is perfectly competent to put it on the record. He is a bright man. There is no brighter in the business. I cannot hurt him by any cross examination. 4

1       Mr. CALDWELL: Not only that, your Honor, but it tends to negative the contention of the Government that we had a monopoly at all. That this man can go on and continue his business and continue it successfully, in spite of our efforts, if we made any efforts to put him out, it would establish to that extent that we have not any monopoly.

2       Mr. KINGSLEY: If they claim that we have exhausted the resources in our control to put him out of business, and we have not been able to affect him at all, it has some bearing whether we are monopolizing or not, or whether we have the monopoly here claimed.

3       Judge RAY: Supposing he is able to go on clandestinely and secretly, and in by-paths, and get hold of these films, instead of getting them openly, as he did before under his contract, or under his license, and supposing that he shows skill in doing that to such an extent that he has really, in point of fact, built up a better business than he had before, and a more valuable business than he had before, and was able to sell it out for more than he could the old business—what possible bearing has that on the Government's contention that these original acts which they complain of were illegal acts, done for an illegal purpose, and resulted in a wrong? That is what I cannot see.

4       Mr. CALDWELL: It has a bearing on the Government's contention that we are a continuing monopoly, your Honor.

      Judge RAY: How?

      Mr. CALDWELL: It has a bearing on the Government's contention that we are a continuing monopoly, that we not only started out to monopolize the exchange business, but that we have succeeded, and are continuing.

      Mr. GROSVENOR: That is not the best proof. To go into that, with one little man.

      Judge RAY: Supposing you built up a monopoly in the cigar or tobacco trade, and still a man was able to engage in smuggling, so that he really did a better business by illegitimate means than he did before? What defense is that?

      Mr. KINGSLEY: He could plead privilege, but this man does not do it.



Judge RAY: Leave that point out. Supposing he was willing to tell all about it, and the Government waived any prosecution? What defense would that be to you? 1

Mr. KINGSLEY: I do not consider this an analogous situation at all. He does not claim he went clandestinely after film or that he got our film clandestinely. He admits he kept a lot of it and wore it out. He claims he went into the market and bought film. We claim he could do that. He has shown it himself by his own proof. We want to show that this terrible situation of which the Government complains does not exist in the way they say it does. It is not a statutory condition at all. 2

Mr. GROSVENOR: We have got the fact that he is out of business to-day.

Mr. KINGSLEY: Yes, sir. He sold out and won't tell us anything about it. It makes a lot of difference whether he was forced out or sold out.

Mr. GROSVENOR: You have got a dozen lawsuits against him to-day. Why should he be forced to disclose this one fact? 3

Mr. KINGSLEY: I think the witness would have answered if the Attorney General had not instructed him not to.

The Witness (Swaab): I beg your pardon. He did not instruct me. I refused to answer.

Mr. GROSVENOR: Read the whole thing.

The Examiner reads the testimony of the witness as follows:

"Q. In making the consolidation, regarding which you have testified, did you place a valuation upon your interest last October? A. I think I did. 4

"Q. And was this valuation included in the new organization? A. Yes, sir.

"Q. Did you receive money or stock for this valuation? A. I sold a half interest.

"Q. How much did you sell your half interest for? A. Is is necessary to answer that question?

1           “Mr. GROSVENOR: No, it is not.

“The Witness: I consider that my personal, private affairs.”

The Examiner: Then again later on, in the same matter, Mr. Kingsley asked “How much did you sell it for?” and the witness answered, “I refuse to answer that question. That is my private affair.”

Mr. GROSVENOR: Read on afterwards what I said. When I advised the witness distinctly that I was not instructing him.

2           The Examiner: Mr. Grosvenor says: “You understand that I do not give you any instructions?” and the witness answered, “I thoroughly understand that you have not.” And you told him then that he could consult with counsel and get himself counsel.

Mr. GROSVENOR: Read what I said about giving him no instructions in the premises, but that I merely objected to the question as incompetent, irrelevant and wholly immaterial.

3           Mr. KINGSLEY: The best comment, your Honor, as to its materiality is what Mr. Grosvenor just said in closing. This man is out of business. Is he out of business, or did he sell out and retire? He says he is out of business. He brings it down to last October in that statement. It is a thoroughly material question under all of these conditions.

Judge RAY: As far as that is concerned, it does appear that he sold out. You referred there in those questions to a reorganization. And that related to this new business, I take it. What was meant there by the reorganization?

4           Mr. GROSVENOR: That was all cross examination. All of that. By Mr. Kingsley.

Mr. KINGSLEY: This was about fifteen months after the cancellation of his license that this readjustment that he refused to answer about, took place. He was in business up to that moment. Now Mr. Grosvenor says he is out of business, meaning that he is driven out.

Judge RAY: The evidence refers to a reorganization. What was that?

Mr. KINGSLEY: That was regarding last October's transaction. Whatever it may have been.

The Witness (Swaab): It was a consolidation of several exchanges, your Honor. 1

Judge RAY: A reorganization of his business?

Mr. KINGSLEY: A reorganization in which he participated. As far as the cross examination went, he stated that it was consolidated or reorganized. I may have been unfortunate in using the term "reorganization." I should have said "consolidation," possibly. I wanted to find out whether he had sold all of it or half of it or what the transaction was, all the time bearing in mind that the Government claims that we have driven him out of business. This reorganization, your Honor, takes place long after that cancellation of the license, some eighteen months, but he has been doing business at the same place all the time. 2

Mr. GROSVENOR: This is entirely new subject matter not referred to on the direct examination.

Mr. KINGSLEY: It is the same business that you claim we drove him out of.

The Examiner: I can read it to your Honor. (Reading): 3

"Q. Last October, when you turned your business over to your successors, did you then have in your possession any of the licensed film? A. There may have been some, I won't be positive of that.

"Q. To whom did you dispose of your exchange? A. I did not dispose of it; I consolidated with several others.

"Q. But you retired from it, did you not? A. As far as my actual attention was concerned.

"Q. And under what name is it running now? A. The Interstate Films Company. 4

"Q. Did you sell your interest at the time of the consolidation? A. No.

"Q. Did you receive cash for your interest? A. I did not sell it.

"Mr. GROSVENOR: I object to that as immaterial.

"By Mr. KINGSLEY:

"Q. In making the consolidation regarding which you have testified, did you place a valuation upon your interest last October? A. I think I did.



1           “Q. And was this valuation included in the new organization? A. Yes, sir.

          “Q. Did you receive money or stock for this valuation? A. I sold a half interest.

          “Q. And how much did you sell your half interest for?”

          The Examiner: And then he asks if it is necessary for him to answer the question.

          Judge RAY: Then he seems to have had a business or an exchange and he consolidated that with others, and then he sold out his interest. Is that it?

2           Mr. KINGSLEY: In the consolidation, as I gather, he either took stock or money, I don't know which, for stock or his interest.

          The Witness (Swaab): I can explain that—

          Judge RAY (interrupting): That is in the new business.

          The Witness (Swaab): Yes, sir.

          Mr. GROSVENOR: Why don't you explain it to the court?

3           The Witness (Swaab): There were several exchanges consolidated, and after that, we sold a half interest of the consolidation to another company; in other words, we sold a half interest to the manufacturers from whom we purchased goods. Those who had been supplying us with films right along on the independent side.

          Mr. KINGSLEY: So the gentleman is not out of business, it seems.

4           The Witness (Swaab): Was practically out of business for nearly two years. Trying to build up a business that had been ruined by the Patents Company, and never was properly built up after it was ruined.

          Judge RAY: It amounts simply to that effort, Mr. Kingsley, on your part, to show the value of this new business.

          Mr. KINGSLEY: I want to show whether he was in business or not.

          Judge RAY: You have already got that. Your record shows that he was in business. An exchange was formed, and what property he was using, and that he sold out a half interest. All of that you have

got. That he was not out of business. That he is not out of business. He may have been for a little time, as he says, but that he built up, as the Government says, a new business, on a different basis, getting his supplies outside, and so far as it appears here, that new business is going on now, isn't it? 1

Mr. GROSVENOR: I should say so as far as it appears from the record.

Judge RAY: As far as it was read to me.

Mr. GROSVENOR: And they want to know how much he got for selling half of that new business, and he claims that that is his personal affair. 2

Judge RAY: And he still retains a half interest?

The Witness (Swaab): Yes, sir.

Judge RAY: I do not see any materiality to it at all. It is his private business. I do not see how it has anything to do with the inquiry that the Government is making. If the Government, however, went into this business, this new business, after the point where Mr. Grosvenor says they stopped, where the licenses were cancelled, and the suits were brought,—if the Government has gone beyond that into this which we will call here a continuation, or a new business on a different basis,—because he gets his films elsewhere—if the Government has gone into that and made it any part of its case, I will make him answer. If not, then I will say not to answer, because it is not a matter into which you have gone to show the nature of it and how much he has sold an interest in it for, and that aspect is entirely immaterial. 3

Mr. CALDWELL: Does your Honor rule that the matter is privileged? 4

Judge RAY: No.

Mr. CALDWELL: I understand the practice is that it is for the Trial Court to pass upon the question of materiality of the testimony, and unless the question is privileged, the practice is to direct the witness to answer and leave it to the Trial Court to make the witness answer.

Judge RAY: It is in the nature, of course, but it is not strictly privileged.

Mr. KINGSLEY: When the Government asked what

1       became of his customers, and went into the question of the replevin suits did not the Government continue the inquiry? When they asked him what happened in the replevin suits, and carried it down to the judgment in May of 1912, the same year that he formed this consolidation in October—did not the Government then carry it along past the date of the cancellation?

2       Judge RAY: They carried it past the date, true. But it was not anything—if they were inquiring about those replevin suits and whether it was not any part of the new business connected with them. That is, the new business, as we are calling it. It would be simply a disposition of old matters, of property that he had under the license which he did not give up. He may have claimed to retain them for one reason or for another. For aught I know, he may have claimed to have purchased them, or owned them. He is fighting those suits, which are a part of the old matter. It is like some old matter growing out of a partnership matter which might run along for years, but still it would be a part of the old matters, and not part of any new business that had been gone into.

3       Mr. CALDWELL: Does not your Honor think that the Government has opened the door to this testimony in bringing out the fact that there was a verbal agreement on his part to sell to the General Film Company for \$37,000? Claiming by implication, at least, or by inference at least, that he was forced to sell at a grossly inadequate price, a business that was paying him \$25,000 a year in profits?

      Judge RAY: He did not sell.

4       Mr. CALDWELL: The Government has brought out that there was a verbal agreement to sell which was not consummated.

      Mr. GROSVENOR: Your Honor has it exactly right. He did not sell in 1910, and then his license was cancelled, and then he lost his customers, and then he went into this new business which was asked about on cross examination, and in respect to which I asked not a question as far as I can recall now, on my direct examination.

      Judge RAY: As I understand it, the basis of my ruling now is this. This gentleman was engaged in



this—we will call it film business—how extensive it was, I do not know. It is immaterial, as long as we give it a name. He was using certain articles—patented articles, I take it. 1

Mr. GROSVENOR: That is one of the issues in this case.

Judge RAY: Well, which others claimed they had the right to use exclusively. This gentleman having built up that business, was using these articles under a license. Then approaches are made to him in the interests of what the Government claims was an illegal combination. If I get anything wrong, stop me. And an offer was made to him by the people engaged in this combination, trying to build it up, or perfect it—for \$37,000 for his business. He does make a contract, or some sort of an agreement to sell out to them, but for some reason or other he does not, and refuses it, and that is ended, whereupon the contention of the Government is that these people engaged in forming the combination, directly or indirectly, in some way procured all of these licenses to be cancelled, so that if he had not other ways and means, that would have demolished and ended his business, and would have destroyed it. That is your contention? 2 3

Mr. GROSVENOR: Yes.

Judge RAY: And then you say there were certain things he did not give up that he claimed the right to retain, as you claim, through the same machinations, replevin suits were brought against him, so that he was vexed by litigation. Now, at that point you stopped?

Mr. GROSVENOR: Yes, so I understand from the record.

Judge RAY: Now, it is on that basis that I make my ruling, because his contention now is, and if that is his evidence, that he does continue that same class and kind of business, but not the same business, because he was driven to the extremity of getting films elsewhere and in other ways—the Government says at that point all the damage was done. That he was virtually out of business, and the fact that he was able thereafter to get films elsewhere and build up another business, is not in favor of these defendants 4

1 at all. It is not in extenuation, does not change the  
nature of their prior acts, and that it is immaterial  
and especially the amount or the value of that new  
business that he built up is immaterial matter,  
whether large or small, and especially how much he  
got for it. It is his own private business, and of no  
materiality. Now, on the theory and what Mr. Gros-  
venor said is the position and the evidence of the  
Government, I hold that that is so. This new busi-  
ness had nothing to do with it. If, on the other hand,  
2 you could satisfy me it was a continuation of the  
same business, had no ending—but now on your theory  
that the business is going on. Assume that you have  
all of that proof. You have the nature of it, and the  
extent of it. All of that he has answered. It comes  
down to a point where he says he sold out a half inter-  
est of it. How much did he get for it? How much did  
he sell it for? What is its value? What possible bear-  
ing does it have on the issues of the case? That is  
what I cannot see.

3 Mr. CHURCH: But if your Honor pleases, much of  
his business was due to stock which was owned by us,  
and should have been returned to us, and was not.  
At any rate, the business is continued with stock  
which is our property, as we claim.

Mr. KINGSLEY: I brought out on cross examina-  
tion something to which I have already called your  
Honor's attention. Part of his stock on hand was  
stock of ours which he went on handling. It was a  
new business with the old films.

Mr. GROSVENOR: That is all in litigation in other  
suits.

4 Mr. CHURCH: But not in this suit, Mr. Grosvenor.

Mr. GROSVENOR: Therefore, it is irrelevant in this  
suit.

Mr. CHURCH: But you brought it in.

Mr. KINGSLEY: You have talked about prices;  
oppressive prices, on direct examination.

Judge RAY: But he denies that he has used it  
or sold it.

Mr. CHURCH: He has admitted it on the record,  
your Honor.

Mr. KINGSLEY: He admits he used it right there

at the same place, and wore it out after the replevin suits. Some four or five hundred reels of film. 1

Mr. CHURCH: In building this new business, he used our bricks to build his wall.

Mr. GROSVENOR: May I ask this witness a question? Was this business that you sold, any part of it, this old matter?

The Witness (SWAAB): No, sir.

Mr. GROSVENOR: Was it all the films?

The Witness (SWAAB): Not at all.

Judge RAY: I will turn this matter over in my mind and let you know in the morning. 2

Mr. GROSVENOR: Would you like a copy of the direct examination of Mr. Swaab?

Judge RAY: It might change my views.

Mr. GROSVENOR: The Examiner has an extra copy here.

Mr. KINGSLEY: Mr. Examiner, will you send his Honor a copy of the cross examination?

The Examiner: Yes.

Judge RAY: I will be at Judge Hough's chambers by nine o'clock. You can send it over, and reading it over may change my views. 3

The Examiner: The hearing is adjourned until 10:30 o'clock, Tuesday morning, July 8th, 1913, to be resumed at Room 47, Post Office Building, New York City.

Thereupon at 5:30 o'clock P. M., on this July 7, 1913, the hearing was adjourned.



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IN THE  
DISTRICT COURT OF THE UNITED STATES  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

2	<p>UNITED STATES OF AMERICA, Petitioner,  v.  MOTION PICTURE PATENTS CO., and others, Defendants.</p>	} No. 889. Sept. Sess., 1912.
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New York, July 8th, 1913.

The hearing was resumed pursuant to adjournment, at 10.30 o'clock A. M. on this July 8th, 1913, at Room 47, Post Office Building.

- 3 Present on behalf of the Petitioner, Hon. EDWIN P. GROSVENOR, Special Assistant to the Attorney General.  
JOSEPH R. DARLING, Esq., Special Agent.
- Present also, Messrs. CHARLES F. KINGSLEY, GEORGE R. WILLIS and FRED R. WILLIAMS, appearing for Motion Picture Patents Company, Biograph Company, Jeremiah J. Kennedy, Harry N. Marvin, and Armat Moving Picture Company.
- 4 Mr. J. H. CALDWELL, appearing for William Pelzer, General Film Company, Thomas A. Edison, Inc., Kalem Company, Inc., Melies Manufacturing Company, Pathe Freres, Frank L. Dyer, Samuel Long, J. A. Berst and Gaston Melies.
- Mr. HENRY MELVILLE, attorney for George Kleine Essanay Film Manufacturing Company, Selig Polyscope, George K. Spoor and W. N. Selig.
- Mr. JAMES J. ALLEN, appearing for Vitagraph Company of America, and Albert E. Smith.

Thereupon, LEWIS M. SWAAB resumed the stand for further cross examination. 1

Cross examination (continued) by Mr. KINGSLEY:

Q. Now, Mr. Swaab, you didn't go back to Philadelphia last night, did you? A. Yes, sir.

Q. Did you bring that book I asked for? A. No, I didn't go to the office at all.

Q. You recall that I asked you yesterday for the Edison Circular relative to the projecting machines? A. Yes, I do.

Q. Which was marked for identification at the last hearing? A. Yes, sir. 2

Q. And you didn't get that when you went back? A. No, sir.

Q. Will you get that when you do go back, and as you stated yesterday, mail it to the Examiner? A. Yes, I will.

Q. Now, Mr. Swaab, how many trials were there of the replevin suits brought against you in Philadelphia? A. We had one trial, and attempted to have another; it was set.

Q. In each case the different plaintiffs were represented, were they not? A. Yes, sir.

Q. In the first case the Lubin Manufacturing Company sued you? A. Yes. 3

Q. And in the second case it was the Edison Company? A. I think in the second case, to the best of my knowledge, the Biograph Company.

Q. At any rate it was another company? A. Yes, sir.

Q. On the trial of the Lubin suit you were asked regarding the whereabouts of a book containing a list of the motion pictures shipped to you by the various licensed manufacturers? A. I answered that question on yesterday.

Q. Were you asked about its whereabouts, and on that trial did you swear that the book was destroyed? A. I didn't put it in the way you put it; I stated to the best of my knowledge and belief it was lost. 4

Q. Did you swear at that trial that you had looked for the book? A. I did.

Q. Had you looked for the book? A. Yes, I certainly had.

Q. Now, on the second trial you were again interrogated regarding that book? A. Yes, sir.

Mr. GROSVENOR: I object to that as immaterial,

1       having no hearing on any of the issues, and not relating to any of the matters in respect to which the witness was examined on direct examination.

Mr. KINGSLEY: It goes directly to the credibility of the witness.

Mr. GROSVENOR: It cannot go to the credibility of the witness, to interrogate the witness as to different testimony given in other suits relating to matters not here in issue.

2       Mr. KINGSLEY: I can test the credibility of the witness by examining him regarding conflicting statements which grow out of matters which have been put into this record.

By Mr. KINGSLEY:

Q. On the trial of the Edison case, the "Biograph case" as you call it, were you again questioned regarding the whereabouts of that book? A. Yes, sir.

Q. And did you again say it was lost? A. Yes, sir.

Q. Did you say you had made search for it? A. Yes, I did.

3       Q. Had you made search for it just prior to the second trial? A. Not just prior to it, no.

Q. When had you last made search? A. Prior to the first trial.

Q. Had you made search for it prior to the second trial, of that Edison case? A. No, sir.

Q. Did you swear you looked for it? A. Yes, and so I had in the first place before the first trial.

4       Q. When was it you discovered that book after the trial of the Edison case? A. You will insist on it being the "Edison case." I don't call it the "Edison case" at all. That case where you folks were—

Q. (interrupting): Being the case where the mistrial was declared— A. (interrupting): Well, that is a good way to put it. To the best of my knowledge it was the Biograph case.

Q. That is immaterial, I don't suppose it makes any difference. My understanding is that it was the Edison case, but, at any rate, it was the trial of the second case. On both of those trials you were under subpoena *duces tecum* to produce this particular book? A. Not that particular book.

Q. But to produce all books? A. Yes, sir.



Q. Relating to the leasing of motion pictures from the licensed manufacturers? A. Yes, sir. 1

Q. Now, when was it that you discovered this book? A. On the day of the second trial.

Q. After the mistrial? A. Yes.

Q. Have you the book now? A. I have.

Q. Where? A. In my office in Philadelphia.

Q. Is it available? A. Yes, sir.

Q. Did you search for this book at all just prior to the last trial under the subpoena *duces tecum* which had been served on you? A. No, sir.

Q. Didn't you know it was a necessary and material book for the purposes of that trial? A. No, sir. 2

Q. Mr. Swaab, now when you took out a license with the Patents Company you were permitted after the expiration of six or seven months to return old film, were you not? A. Yes, sir.

Q. Instead of film that had been shipped to you by the licensees? A. Yes, sir.

Q. And after a considerable period of time, after the expiration of the first six months under your license, you did return old film that was in your possession? A. Yes, sir. 3

Q. Naturally you chose the film that you did not think was of great value to you, and sent that instead of film that was of greater value? A. Perhaps.

Q. Well, did you, or did you not? A. I can't answer that in the way you put it, because I did not attend to that personally at all times.

Q. But when you did attend to it personally you did that, of course? A. Naturally.

Q. You used some judgment and picked out film that was worn out and sent it back? A. Naturally. 4

Q. That was the practice you desired to have carried out in your establishment? A. My presumption is that my desires were carried out.

Q. The business at that time was under your direct supervision, was it not? A. Yes, sir.

Q. Do you recall that a number of reels of motion pictures which had been leased to you by the licensees were replevined from W. H. Kelly, at York, Pa.? A. No, not the titles of them; I can't recall them.

Q. Do you remember that a number of pictures, re-

1   gardless of their titles— A. (interrupting): I recall that two reels were replevied.

Q. From Mr. Kelly, at York, Pa.? A. Yes, sir, and he rebonded them and returned them to me, and the Patents Company, by dishonorable means—

Q. (interrupting): That is all I wanted you to— A. (interrupting): Well, I insist on it—

Q. (interrupting): All I wanted to know about, were the reels— A. (interrupting): I want to insist on saying they got them in a dishonorable way from me—

2           Mr. CALDWELL: I move to strike out the last statement of the witness as not responsive.

Mr. KINGSLEY: I make the same motion.

Mr. GROSVENOR: Objected to as not proper cross examination, as going into new subjects, and also into matters that have no relation to any issues in this case.

3           The Witness: I will say that I am surprised that they mentioned Mr. Kelly's name, because they didn't dare put him on the stand in the first trial.

Mr. KINGSLEY: I move to strike that out as not being in response to any question asked the witness on cross examination.

The Witness: I can show an affidavit of Mr. Kelly, and he corroborates the statement I made originally to the Patents Company.

By Mr. KINGSLEY:

4           Q. Do you know Mr. Kelly's signature? A. No, I won't say that I do, although I can show you Mr. Kelly's signature on papers I have.

Q. Are you now interested in the manufacturing business? A. No.

Q. Were you ever a manufacturer? A. Never.

Q. Were you ever an exhibitor? A. No.

Q. Are you conversant with the exhibition business, except as the owner of a rental exchange? A. No; yes, I am conversant with the business as an exhibitor—that is,

I understand the exchange business, but not the exhibition business. 1

Q. You mean that you are not conversant with the business as an exhibitor? A. No.

Q. And that you understand the exchange business? A. Yes.

Q. Now, as an owner and manager of a rental exchange, did you examine the quality of the motion pictures that were received by you? A. No.

Q. With reference to their drawing power? A. No, I did not.

Q. Did you know anything about them with respect to their make-up, whether scenic, educational or dramatic? 2

Mr. GROSVENOR: Objected to, all this line of examination, as improper cross examination.

The Witness: At times I did; I didn't know every film that came into the place and was not conversant with it.

By Mr. KINGSLEY:

Q. What was the character of films in the majority of instances? A. I can't answer that. 3

Q. Scenic or dramatic? A. I can't answer that.

Q. You didn't investigate that? A. No, sir.

Q. Did you ever go to see them exhibited? A. Occasionally.

Q. More as a matter of pleasure than as a matter of business? A. Yes, sir.

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Thereupon, HECTOR J. STREYCKMANS, a witness subpœnaed on behalf of petitioner, of lawful age, first duly sworn, deposed as follows: 4

Direct examination by Mr. GROSVENOR:

Q. Mr. Streyckmans, what is your business? A. Employed by the Mutual Film Corporation.

Q. What is the business of that company? A. Renting moving picture films.

Q. In the Summer of 1908, in what business were you en-



1 gaged? A. In the newspaper business, and manager of the theatrical paper called the "Show World."

Q. Was that a paper which printed articles and news relating to the motion picture business? A. It made a specialty of the motion picture business.

Q. At that time, that is, in the Summer of 1908, did you know many of the manufacturers of motion picture films? A. I knew practically every man in the business in the United States.

Q. What was your connection with this paper, or weekly, to which you have referred? A. I was manager.

2 Q. Now, in the Summer of 1908, do you recall suits being brought against any of the manufacturers by other manufacturers? A. I believe it was in the Spring of 1908.

Q. Please state what transpired? A. To the best of my recollection, about forty-five suits—do you mean against infringers or exhibitors? Forty-five of those were started in Chicago, in about one day by the Edison Company, against Mr. George Kleine, and his customers.

Q. Who was Mr. George Kleine? A. He was an importer of films.

3 Q. Did you have any conversation with Mr. Kleine, or with any of the other manufacturers, who brought these suits in connection with bringing of the suits? A. I had conversations with Mr. Kleine previous to the bringing of the suits, and after the bringing of the suits; I also had a conversation—you asked me what conversations I had, if I had any? I also had a conversation with Mr. Dyer, at the Auditorium Annex, at which a number of other people were present—

4 Mr. KINGSLEY: I object to the witness repeating any conversation that he had with Mr. Dyer, or anyone else who was present at the time he alleges he had the conversation with Mr. Dyer, on the ground that it is incompetent, immaterial and irrelevant, that it is hearsay and that it is not binding upon any of the defendants, and it is not shown that Mr. Dyer had any official connection with any of the defendants, or the right to speak for them at the particular time at which he says the conversation took place.

Mr. GROSVENOR: I have not yet asked the witness to repeat the substance of the conversation. My question

has been with whom he has had conversations at that time. 1

Mr. KINGSLEY: He started to repeat the conversation—

By Mr. GROSVENOR:

Q. Please continue, Mr. Streyckmans, and state the other manufacturers, if any, with whom you had conversations about that time in connection with suits? A. Well, shall I state how I happened to have the conversation with Mr. Dyer? 2

Q. Mention the names first. A. Mr. Dyer.

Q. Of the Edison Company? A. Yes, sir, he was general counsel of the Edison Company at that time, and sent us an invitation in that capacity to meet up at the Auditorum Annex, in Chicago.

Q. Was this after these suits were brought to which you have referred, or about the time of the bringing of the suits? A. Well, about the time of the suits, I don't recall whether a few days before or after.

Q. Please state what was said by Mr. Dyer at this conversation? 3

Mr. CALDWELL: I object to that on the grounds already stated.

Mr. KINGSLEY: The same objection is made on behalf of the other defendants.

By Mr. GROSVENOR:

Q. Now go ahead, Mr. Streyckmans? A. Why, Mr. Dyer called the newspaper men in the hotel into his room, and he outlined a statement, and he told them that the patents of the Edison Company had been infringed for some time, and that they were now going to take strict steps to prevent a continuance of that action. 4

Q. And against whom were they going to take steps? A. Against anybody who, as he alleged, were infringers.

Q. Did you have any talks with George Spoor, or William Selig, in connection with these suits which were brought against Kleine, and Kleine's customers? A. Yes, I did with both of those gentlemen.

Q. And what did those gentlemen say?

1           Mr. KINGSLEY: I object to a repetition of the alleged conversation with Mr. Spoor and Mr. Selig, on the grounds already stated in objecting to a repetition of an alleged conversation with Mr. Dyer.

2           The Witness: Both gentlemen told me I was very foolish to accept the advertisements of George Kleine in the Show World, and that it would probably lose me the friendship and advertising patronage of the Edison Company, and its licensees, and that as George Kleine would undoubtedly be crushed out of business in a very short time that I would  
3           deprive my paper of valuable business.

By Mr. GROSVENOR:

Q. Did you have any subsequent conversations with any of these manufacturers in the Summer of 1908, relating to the consolidation of their interests in the Motion Picture Patents Company? A. I did.

Q. With what manufacturers? A. George Kleine.

Q. Please state the substance of your conversations with Mr. George Kleine to the best of your recollection?

3           Mr. KINGSLEY: Objected to as incompetent, immaterial and irrelevant and as hearsay, and as not binding upon any of the defendants herein.

Mr. MELVILLE: I understand that one objection answers for all?

Mr. GROSVENOR: Yes, that is right.

By Mr. GROSVENOR:

4           Q. This George Kleine, of whom you are talking, is the George Kleine of the Kleine Optical Company? A. Yes, sir.

Q. All right, go ahead, please. A. Mr. Kleine told me he had been approached by the licensed manufacturers to enter their combination, and bring about a cessation of the suits now pending against him, and that he was going to New York to meet Mr. Dyer to confer with him.

Q. Did you have any conversation with Mr. Kleine on his return? A. I did.

Q. Please state what was said? A. He told me that there was a hitch in the proceedings owing to the fact that



Mr. Dyer insisted upon his going into the combination with only two brands of films. 1

Q. How many lines or types or brands of films was Mr. Kleine importing at that time? A. To the best of my recollection, he had about ten.

Q. Foreign films? A. Foreign films.

Q. Do you recall about what time this conversation you have just referred to was had? A. The first conversation I had in regard to the bringing about of a settlement of the suits, and Mr. Kleine's entering the combination, was around the first of July, 1908.

Q. And when was this conversation with Mr. Kleine on his return and in which you have testified he stated there had been a hitch? A. About the middle of the month, probably the 16th or 17th, I would not remember the exact date. 2

Q. Do you recall if anything was said about the place of meeting in New York? A. Mr. Kleine told me he met Mr. Dyer at the Republican Club.

Q. Why did they meet there?

Mr. KINGSLEY: Objected to, on the ground that it is incompetent, immaterial and irrelevant and hearsay. 3

The Witness: Well, Mr. Kleine said he was a member of the Republican Club and he didn't wish, or that he wanted the record to show that Mr. Dyer called upon Mr. Kleine, as his guest, which was registered in the guest book of the Republican Club, and not that he called upon Mr. Dyer, in case the proceedings should fall through and they did not come to a settlement of their difficulties.

Q. What conversations, after this one which you have just testified to, did you have with Mr. Kleine in connection with the same subject? A. I had a conversation with him every week until December of that year, or the first part of January. 4

Q. State to the best of your recollection what he stated at these several interviews in connection with the progress of the negotiations which finally resulted in the formation of the Patents Company?

Mr. KINGSLEY: Objected to as incompetent, ir-

- 1 relevant and immaterial, and being hearsay, and not binding upon the defendants.

The Witness: Mr. Kleine finally agreed to enter the combination with his two brands of films.

By Mr. GROSVENOR:

- Q. Was there anything said that you recall about the reason for selecting the Gaumont and Urban films out of these ten, that is, to be imported by Kleine, out of the ten  
2 films which he had theretofore imported?

Mr. KINGSLEY: Objected to, as leading, and incompetent, immaterial, hearsay, and not binding upon the defendants.

The Witness: The reason that he was told to take Gaumont was owing to the fact that Gaumont was the owner of patents on a moving picture camera, which were regarded as valuable, and it was intended to hold in the combination.

3

By Mr. GROSVENOR:

Q. You may state whether it was so stated to you by Mr. Kleine? A. It was.

Q. And you may state whether or not Mr. Kleine stated that the same thing had been stated by any of the other manufacturers, and if so, by whom?

Mr. KINGSLEY: I make the same objections.

4

The Witness: Mr. Kleine stated that this had been told him by Mr. Dyer.

By Mr. GROSVENOR:

Q. That what had been told him? A. That Gaumont had an independent and a non-infringing camera, and that they wished to bring the Gaumont Company into the combination in order that these valuable patents would not fall into the hands of the independents.

Q. Do you recall whether or not anything was said in

the Spring of 1908 as to the purpose of bringing these suits against Kleine's customers on Kleine's own patent 12,192, which, as you know, is the film reissue? 1

Mr. KINGSLEY: Objected to, as incompetent, immaterial and irrelevant, and, further, as not binding upon the defendants.

The Witness: Do you mean what was said by whom?

By Mr. GROSVENOR:

Q. By any of these manufacturers of motion picture films? 2

Mr. KINGSLEY: Objected to as incompetent, immaterial and irrelevant, and not binding upon the defendants, and as hearsay.

The Witness: Mr. Kleine and I talked the matter over, and we decided that—

Q. (interrupting): I don't want you to state what you decided, but my question is, Do you recall whether or not anything was said by Mr. Kleine or by these other manufacturers, defendants here, as to the purpose of bringing those suits against Kleine and his customers in the Spring of 1908? A. Mr. Kleine stated to me that a multiplicity of these suits— 3

Mr. KINGSLEY (interrupting): Was Mr. Kleine a defendant in those suits?

The Witness: Yes, sir.

Mr. KINGSLEY: Then I object to anything that Mr. Kleine may have said respecting suits brought against him. 4

By Mr. GROSVENOR:

Q. And is Mr. Kleine a defendant in this suit? A. Yes, sir.

Mr. KINGSLEY: And I further object to it because the statement of Mr. Kleine is not binding upon the defendants in this case in any sense of the word.



1 By Mr. GROSVENOR:

Q. State your answer. A. Mr. Kleine stated to me that a multiplicity of suits upon the same subject matter, instead of one suit with a number of defendants, showed conclusively that the suits were brought for the purpose of harrassing his customers.

Mr. KINGSLEY: I move to strike out the answer as stating the conclusion of Mr. Kleine, and incompetent.

By Mr. GROSVENOR:

2 Q. From your knowledge of trade conditions, and from your connection with the publication of this magazine or newspaper, do you know whether or not similar suits were brought against any other exhibitors, or were those suits confined to the exhibitors, who were the customers of Kleine, in the Spring of 1908? A. The suits were started all over the country.

Q. I show you copy of a letter dated February 19, 1908, and ask you whether or not that is a copy of a letter given you by Mr. Kleine about the time stated in the letter? A. Yes; it was given to me for publication, and I published it.

3 Mr. GROSVENOR: I offer it in evidence.

The paper offered was marked by the Examiner "Petitioner's Exhibit No. 175," and is as follows:

**Petitioner's Exhibit No. 175.**

February 19, 08.

Edison Manufacturing Company,  
10 Fifth Avenue, City.

4 Gentlemen:

Answering the demand of Mr. W. E. Gilmore, Vice President of your company, made Wednesday, Feb. 12th, 08 in the presence of Messrs Melies, Berst, Blackton and Rock that we cease importing motion picture films we beg to state that we have decided not to comply with this demand.

Very respectfully yours,

KLEINE OPTICAL COMPANY,  
Geo. Kleine, Prest.

Thereupon THOMAS H. BATES, a witness subpoenaed on behalf of the petitioner, of lawful age, duly sworn, deposed as follows: 1

Direct examination by Mr. GROSVENOR:

Q. Where do you reside, Mr. Bates? A. I reside in Roxbury, Massachusetts.

Q. Have you ever taken any motion picture films, or had any taken by someone at your direction? A. I have.

Q. When were these motion picture films taken? A. I think, in the month of June, 1911, I think, or 1910—1911. 2

Q. Were these pictures taken for the purpose of exhibition by you in moving picture theatres? A. They were.

Q. Please state in your own way the subject of the picture, the purpose for which the picture was taken, and generally and briefly describe the character of the picture? A. My little son, Thomas H. Bates, Jr., at the age of eleven months manifested extraordinary strength for an infant. I discovered him sitting on the ground handling two seven-pound old fashioned flatirons that his grandmother had been using the night before. I then called the attention of my wife to the fact, and I then took the child and tied the two flatirons together, and my wife held the little boy under his waist, and placed a string holding the two flatirons in his hand, and as she straightened herself up the little boy raised the two flatirons weighing fourteen pounds with his one hand. 3

Q. How old was he? A. He was eleven months old. Then we took the little boy to Boston. We were living in the country where he was born, in Plymouth County, Pembroke Township. We took him to Boston, and had him photographed, and I suggested to the photographer that it was possible that he might be able to sustain his weight by placing his little hands on a horizontal bar improvised for the purpose so he could get his hand around the bar, and we did so, and the photographer took his picture suspended from the bar. When he was 22 months old I had rigged up a little trapeze in the door frame, and permitted him to practice upon the little trapeze, which he very will- 4

1 ingly did, and seemed to enjoy the act, and I tried him  
then again upon lifting weights, and he then had reached  
the point where he could lift a twenty-pound dumbbell with  
one hand, at the age of 22 months. I then bought two 5  
pound dumbbells and used to permit him to practice with  
those two 5 pound dumbbells, which he seemed to be very  
willing to do; and I then bought him some small Indian  
clubs, and I would show him how to handle the clubs, and  
he was very apt at imitation, and he would do the same  
thing. Then I got a photographer, and we had him taken  
2 in motion, lifting weights, lifting a hod of coal weighing  
thirty-six pounds, swinging clubs and going through calis-  
thenics, exercising with a stick and such as placing it behind  
his back this way (indicating) and throwing it out so (indi-  
cating), swinging on the trapeze, sitting on a bar suspended  
between the bar underneath his sister, who sat up on the  
trapeze, making a double act as it were, and that was about  
the feats of his remarkable strength.

Q. Please state what efforts you made to exhibit those  
pictures in the moving picture theatres in Boston, and in  
Massachusetts? A. After the pictures were taken by Mr.  
3 Bosworth, a local photographer—but I must say that prior  
to engaging Mr. Bosworth, I had written to the Lubin Com-  
pany, in Philadelphia, asking them what their charges would  
be to take pictures of this little boy performing these won-  
derful feats of strength, and Mr. Lubin, or his management,  
wrote me back a letter and stated or gave me the prices for  
making the pictures of the little boy. I also wrote to Mr.  
Edison, and Mr. Edison also replied in the same way.

Q. I show you a letter, dated April 10th, 1911, on the  
letter head of Lubin Manufacturing Company, and ask you  
if that was the letter which you received from the Lubin  
4 Manufacturing Company in response to yours, to which you  
have just now referred? A. Yes, this is the letter.

Mr. GROSVENOR: I offer that letter in evidence.

The paper referred to by counsel was marked by  
the Examiner "Petitioner's Exhibit No. 176," and is  
as follows:



**Petitioner's Exhibit No. 176.**

1

## LUBIN MANUFACTURING COMPANY

Philadelphia, Pa. U. S. A.

(All Branch Offices Listed.)

April Tenth, 1911.

Mr. Thos H. Bates,  
133 Moreland St.,  
Roxbury, Mass.

Dear Sir:

2

Replying to your letter of April 8th., would say that our fixed price for making a negative for advertising purposes is \$1.00 a foot for the negative and 15c a foot for each positive together with the necessary expenses for the operators.

A film of this nature, however, appeals to us quite strongly and we may be able to produce this Film in such a manner that we could send it out on our regular release plan and in such an event we could furnish you with a print of the subject in return for the services.

3

We would much prefer taking the picture in our studio where we have every convenience at hand.

We would ask that you communicate with us further on this subject to see if our plan meets with your approval.

Yours very truly,  
LUBIN MANUFACTURING CO.  
Per T. D. Cochrane.

T. D. C.  
L. M. L.

4

Q. Subsequently, you had the pictures taken by this man in Boston? A. Yes, sir.

Q. Named Bosworth? A. Yes, sir.

Q. And then, when you had the positive developed from the negative, what efforts did you make to display the films in the local theatres? A. I was conversant with a gentleman who was the manager of one of the theatres, and he suggested that I go and see Mr. Brooks, the proprietor of

1 the Premier, the Theatre Comique, and the Palace Theatre, and I did; and so Mr. Brooks very eagerly grasped the opportunity to engage the picture. I engaged it with him for one week, I think in the month of July, 1911.

Q. Now, what else did you do? A. After completing my engagement with Mr. Brooks, I then went to Mr. Campbell—no, I am a little ahead there. Mr. Green's manager of the theatre on Revere Beach, Mr. Ashley, he had seen the picture on exhibition in the Theatre Comique, and he asked me if I would be willing to give an exhibition of the picture at Revere Beach for one week, and I told him I would, and we entered into a contract for two weeks, and I took the picture to Revere Beach, and exhibited it for two weeks.

Q. Now, Mr. Bates, did you endeavor to display these pictures in the theatres in Boston? A. I did.

Q. Are you familiar with the terms "licensed theatres," that is to say, theatres so-called, licensed by the Patents Company, and the so-called "independent theatres?" A. Yes, sir.

Q. Now, please state about how many of the theatres in Boston, and in vicinity, in this period namely, the Summer of 1911, were so-called licensed theatres? A. I should, without wishing to be exact, think that all of the theatres in Boston using motion pictures where licensed pictures of the Motion Picture Patents Company were shown, were licensed, except five.

Q. About how many were licensed at that time? A. I should think anywhere between ten and twelve.

Q. Now, were you able to display these films which you have mentioned in the licensed theatres? A. I was not.

Q. Please state what efforts you made to display the films in these licensed theatres, and what reasons were given for the declination and then what correspondence you had with the Motion Picture Patents Company in an effort to display those films in those theatres? A. After closing my engagement at Revere Beach, Mr. Ashley engaged me to go to Portland, Maine, to exhibit the picture in the New Portland Theatre, at an increased salary, and I went to Portland, Maine, under a week's engagement, taking the little boy along. At the termination of the week's engagement, Mr. Keith, manager of Keith's Theatre across the street from the New Portland Theatre, came to me and asked me if I would be willing to take the picture with the little boy upon the

Keith Circuit. I told him I would, provided the salary was ample. He said, "What do you ask?" I said, "\$80 a week." He said, "Will you write to New York City to the manager of Keith's Family Circuit, and use my name?" I said I would. I did so. And I got an answer back asking me when I could come to New York, that the management thought that they could use the picture around New York. I then answered back that I would come at any time that they requested me to come. I received again a letter in the course of about ten days, stating that they were very sorry, or regretted, rather, that they would have to cancel the offer, without giving me any reasons whatever for the cancellation. I then tried to get the picture introduced into the Boston theatres, using the Motion Picture Patents Company's films, and I was told I could not use the picture in any theatre using the Motion Picture Patents Company's films.

I then took and went to the local manager of the Motion Picture Patents Company, Mr. Marston, and I asked him if he would not be willing to withdraw any objection he had against my film, and permit me to exhibit it in theatres using the Motion Picture Patents Company's films. He said, "If you will let the Motion Picture Patents Company make you a film," he said, "and you will give us the film which you have," he said, "then the Motion Picture Patents Company may license your picture, but otherwise," he said, "you cannot exhibit that picture in any theatre where our pictures are in use." He said, "Not even if it was a foot long." I said, "Mr. Marston"—

Mr. KINGSLEY (interrupting) I object to what the witness may have said to Mr. Marston, being his own conclusions, and his own ideas, incompetent, immaterial and irrelevant.

By Mr. GROSVENOR:

Q. Please state the whole conversation. This Mr. Marston was the local representative of— A. (interrupting): Of the Motion Picture Patents Company.

Mr. KINGSLEY: Mr. Bates was not. I object to any ideas he may have had.



- 1 The Witness: I said, "Would you deprive my children of the necessities of life?" "I don't care about that," he said.

Mr. KINGSLEY: I object to any conversation that the witness may have had with Mr. Marston, as it is not shown that he is a representative of the Motion Picture Patents Company in Boston or anywhere else.

By Mr. GROSVENOR:

- Q. Go ahead. A. I then went to the Pastime Theatre.  
2 I first went home and I told my wife—

Q. (interrupting): You can leave out what you did at home. A. We went to the Pastime Theatre, and I tried to get an engagement there. He said to me, "Well," he said, "I saw the picture at the Premier Theatre, and I would like to engage it, but," he said, "we could not do it," he said. "We are using the trust companies' pictures, and if we did, they would take their pictures out of the house." He said, "I cannot use your pictures." I said, "Is that the reason?" He said, "Yes, that is the reason. I have got nothing against the picture at all."

- 3 We then went to the Unique Theatre, and I called the manager aside, and I said, "I would like to get an engagement for my picture." He said, "Well, I will tell you. I cannot engage you, because we are using the trust companies' pictures," and he said, "we are stopped from using any pictures not made by the trust." He said, "I could not give you an engagement." I said, "Would you be willing to sign a statement to that effect, that if it were not that the trust objects to the use of an independent picture going into the theatre, that you would be willing to use my picture?" He said, "I would be perfectly willing to sign  
4 a statement to that effect if the other managers using the trust companies' pictures would do the same." I left him at that.

I then went to the Huntington Avenue Theatre, Mr. Jones, and I asked him for an engagement. He said, "Well, come around tomorrow and I will see what I can do." I came around the next day, and we had a talk. He said, "Look here, just let me think it over for another day." I came around the next day. He said, "I cannot use your picture," I said, "Why?" "Because," he said, "Mr. Mars-

ton said he objects to your picture being used." He said, "I am using the trust pictures, and I cannot give your picture an engagement." I said, "That is the reason?" He said, "Yes, that is the reason." I left him. 1

Then I went from there to Mr. Campbell, I think, who was managing the Marlboro Theatre at Marlboro. I told him the circumstances and he said, "I will give you an engagement." I said, "You are not using trust pictures?" He said, "No." He said, "I am using the independent pictures." So we took an engagement at Marlboro.

Q. Did you try to exhibit your film in every one of the licensed theatres in Boston? A. I did. 2

Q. Were you able to get the pictures in any of those theatres? A. No theatre using the trust companies' pictures at all. I could only get into the theatres using independent pictures.

Q. Did you subsequently have some correspondence with the Motion Picture Patents Company in connection with this subject? A. I did.

Q. I show you a letter on the letterhead of the Motion Picture Patents Company, dated October 20th, 1911. Is that a letter received by you from them on that subject? (Handing paper to witness.) A. (witness examining paper): It is. 3

Mr. GROSVENOR: I offer it in evidence.

The paper offered is marked Petitioner's Exhibit No. 177, and is as follows:

**Petitioner's Exhibit No. 177.**

**MOTION PICTURE PATENTS COMPANY**

80 Fifth Avenue, New York. 4

October 20th, 1911.

Mr. Thomas H. Bates,  
133 Moreland Street,  
Roxbury, Mass.

Dear Sir:—

Replying to yours of the 14th, the terms of the license issued by us for the use of projecting machines covered by

1 our patents, permit the use on licensed projecting machines, only of films made and supplied by a licensed manufacturer or importer.

If you desire to have motion pictures made of your son for use on licensed projecting machines, we know no reason why you cannot have such films made by one of our licensed manufacturers, of whom we enclose you a list.

Such films, however, could not be exhibited by you upon unlicensed projecting machines.

Yours very truly,  
MOTION PICTURE PATENTS COMPANY.  
By H. N. M.

H N M/M M  
Enc.

By Mr. GROSVENOR:

Q. Have you a copy of the letter to which that is an answer? A. Yes, I have it home.

Q. Will you kindly make a note of it and send it to the Examiner? A. Yes.

3 Q. Now, I show you three other letters, and ask you if these letters are also some of the correspondence you had with that company? (Handing papers to witness.) A. (witness examining papers): Yes, sir.

MR. GROSVENOR: I offer them in evidence.

The papers offered are marked respectively Petitioner's Exhibit No. 178, Petitioner's Exhibit No. 179 and Petitioner's Exhibit No. 180; and the same are as follows:

**Petitioner's Exhibit No. 178.**

139 Roxbury Street, Roxbury, Mass.  
November 3rd, 1911.

To the Motion Picture Patents Company,  
80 Fifth Ave.,  
New York, N. Y.

Dear Sirs:

I wrote you on the 14th of October, 1911, relating the



condition I am placed in by the acts of your local agent here. I now own a motion picture film, describing the athletic acts and training of my Baby Son, Thomas H. Bates, Jr., Baby Hercules. I am denied the right to use the same in theatres exhibiting your films, because my film was not made by the companies you are one of, known as the "The Motion Picture Patents Company." So the managers of theatres tell me, and who also inform me they would gladly engage me and my motion pictures, were it not for the reason that should they do so, your pictures and machines would be taken out of their house.

I am not making pictures to sell, or in any way compete with your films or machines. My film is for my lecture purposes only, and to describe in detail the training of the child. In every sense it is a vaudeville act, and is the only film of its kind in the world, and is my exclusive property, and the means I have to make bread for my children. I have not got the means to have another film, made as you suggested in your letter—besides, what would I do with the one I have? Surely you can see that your attitude towards me, reflected by the acts of your local agent here, Mr. Marston, is not the correction of a trespass, because I have in no way interfered with your business, to the extent of one penny. It savors of persecution of myself, for the reason that I am prevented from making the necessities of life for my family. I have not the means to buy another film, as you have reminded me in your letter, of October 20th, 1911. I ask you in all fairness to raise the objection against my use of my film, in all theatres where Motion Picture Patents Company films are used, to the end that I may not be discriminated against by the managers of any and all theatres using your films.

Mr. Bernard M. Corbett of the Edison Kinetograph Sales Dept., to whom I told my story here, advised me to write you again, stating you would do me the justice I ask, when you understood my case.

Hoping for a speedy reply, I remain,

Very truly yours,

Thos. H. Bates.

1

**Petitioner's Exhibit No. 179.**

MOTION PICTURE PATENTS COMPANY

80 Fifth Avenue, New York

January 2nd, 1912.

Mr. Thos. H. Bates,  
139 Roxbury St.,  
Roxbury, Mass.

Dear Sir:—

2

Referring to the pictures of your son—Baby Hercules.

Please inform us who made these pictures for you, and let us know the length of the film.

If you desire to use this film only in connection with exhibitions given by yourself, so that there would be but one copy of the film in use, some arrangement might possibly be made by which you would be permitted to give your exhibition in licensed theatres.

3

Would you be willing to turn over the negative to us, on condition that no prints should be made from it, and that the print which you have should be the only one, would you then agree not to exhibit the film in any but licensed theatres?

Awaiting the favor of a reply, we remain,

Yours truly,

MOTION PICTURE PATENTS COMPANY.

By H. N. M.

HNM/MQ

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**Petitioner's Exhibit No. 180.**

4

MOTION PICTURE PATENTS COMPANY

80 Fifth Avenue, New York

January 10th, 1912.

Mr. Thomas H. Bates,  
139 Roxbury Street,  
Roxbury, Mass.

Dear Sir:

Replying to yours of the 5th.

We will license your motion picture, about six hundred

and twenty (620) feet in length, showing your son as the "Baby Hercules" upon the following conditions: 1

1st. That you send the negative to us to be taken care of by us for your account, and to be used only in supplying prints to your order, such prints, if any, to be made by one of our licensed manufacturers. In caring for the negative we would assume no responsibility for loss or damage other than the exercise of ordinary care in its preservation. The negative would be deposited by us in a fire-proof vault of one of our licensed manufacturers where negatives are commonly stored. 2

2nd. That you retain only a single positive print from this negative and that you guarantee to us that there are no other prints in existence.

3rd. We to procure the manufacture for you of a duplicate positive print, to be leased to you at fifteen cents (15c) per foot at any time upon your surrender to us of the print in your possession, or upon your presentation of proof of the total destruction of such print. 3

4th. The positive print retained by you or any positive print subsequently supplied to you in place of a print formerly possessed by you shall be used only by you in giving exhibitions such exhibitions only to be given on projecting machines licensed by us, and the said motion picture shall not be used or permitted to be used in connection with any motion pictures embodying the invention of the Edison Re-issue Patent No. 12,192, that are not licensed by us.

5th. If the above motion picture is exhibited by you or if you permit the exhibition of the said motion picture on an unlicensed projecting machine that embodies any of the inventions covered by any of our patents, or if you permit a reproduction commonly known as a "dupe" to be made of said motion picture, the motion picture so exhibited or "duped" as well as any reproduction or "dupe" that has been made from said motion picture, shall be forfeited and we shall be authorized and empowered to seize said motion picture or "dupe", and the negative shall be forfeited to us and you shall have no further right to obtain positive prints thereof. 4





get an engagement in the Eagle Theatre in Boston for three days for the picture. After the three days expired, and I was paid, the proprietor of the theatre came to me and told me that he had got into a serious difficulty with the agent of the United Film Company's management.

1

Q. With the agent of what? A. What is the name? The Motion Picture Patents Company's management. They go under some other name. They have got another name.

Q. General Film Company? A. General Film Company, yes. And so I said to him, "Why?" He said, "Because I have exhibited your picture." I said, "What has that got to do with it?" "Well," he said, "I am using," he said, "the General Film Company pictures, and they have found out that I have been using this picture of yours, and now," he said, "they have threatened to take away the pictures that I have been in the habit of getting from them and refusing me any more service." He said, "Won't you be kind enough to say that I did not use your picture?" "Why," I said, "I could not say that, because two or three thousand people have witnessed it in the theatre. How can I say that you did not use the picture?"

2

Mr. KINGSLEY: I object to any further conversation that might have been had between Mr. Bates and the manager of this theatre, as incompetent, immaterial and irrelevant, and having no probative value.

3

Q. I think you have described that sufficiently. The sum and substance of it was that this theatre got into trouble because it had shown your pictures? A. Exactly.

Q. And was that the only licensed theatre that did show any of your pictures in Massachusetts? A. That was the only licensed theatre that showed my picture in Massachusetts, using the General Film Company.

4

Q. Where is the Savoy Theatre? A. The Savoy Theatre was in the building owned by Luddy Crabtree.

Q. Was that a licensed theatre in October, 1911? A. That was a licensed theatre in October, 1911, using the Motion Picture Patents Company's film.

Q. Is this typewritten sheet with the signature "Arthur M. Symonds, Manager," the statement made to you by the theatre about the time stated on the sheet, namely, October

1 13th, 1911 (handing paper to witness)? A. (witness examining paper) : Yes, sir. This is the letter.

Q. What does that refer to? A. This refers to the fact that Mr. Symonds, the manager of the theatre, states that he would be willing to give me an engagement for my picture were it not for fear of incurring the displeasure of the Motion Picture Patents Company management, whose pictures he was using.

Mr. KINGSLEY : Is that the phraseology of the letter or is that your own phraseology?

2 By Mr. GROSVENOR :

Q. It says, "provided the agent of the New York Syndicate of Motion Picture Film Companies does not object." Does that term refer to the General Film Company or the Motion Picture Patents Company, or what is that?

Mr. KINGSLEY : I object to that question as calling for a conclusion of the witness.

A. It was.

3 By Mr. GROSVENOR :

Q. Did you write this? A. It was written by a typewriter. I did not typewrite it at all.

Q. Was it typewritten at your dictation? A. It was typewritten at my dictation.

Q. And you were not familiar with the exact name of the so-called trust? A. I was not.

4 Mr. GROSVENOR : I offer it in evidence as showing the trade conditions.

The paper offered is marked Petitioner's Exhibit No. 181, and is as follows :

**Petitioner's Exhibit No. 181.**

Boston, October 13, 1911.

This certifies that we, the undersigned, are willing to use



the Baby Hercules Moving Picture Film, descriptive of the athletic feats of the boy baby, lifting heavy weights, etc., accompanied by lecture and presentation of the boy to the audience, on such salary conditions as to us seems satisfactory, provided the agent of the New York Syndicate of Moving Picture Films Company does not object under threat of refusing to permit me to use said syndicate films. 1

ARTHUR F. SYMONDS, Mgr.,  
Savoy Theatre.

Whereupon, at 12 o'clock noon, the hearing is adjourned until 2:30 P. M., at the same place. 2

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New York City, July 8th, 1913.  
2:30 P. M.

The hearing was resumed pursuant to adjournment, at 2:30 o'clock P. M. on this 8th day of July, 1913, at Room 47, Post Office Building.

The appearances are the same as at the morning session. 3

Mr. GROSVENOR: Now, in view of Judge Ray's ruling that Mr. Swaab does not have to answer that question propounded to him yesterday in respect to which we had the discussion, I presume Mr. Swaab may be excused?

Mr. KINGSLEY: He may depart.

Judge Ray's ruling on question propounded to the witness Swaab, and certified.

Judge RAY: On this question which was propounded to the witness Swaab, "How much did you sell your half interest for?" and the witness raised the question whether or not it was necessary for him to answer it, and the witness said, "I consider that my personal private affairs"—of course, I do not hold that it is privileged. If it was pertinent and would throw any light on the questions at issue here, why, I should say of course, answer the question, but his answer to that in no wise tends to explain, modify or limit anything he has testified to on his direct examination—his an- 4

- 1       swer in no wise tends to impeach or discredit him, and I cannot discover that it has any relevancy or materiality so far as the inquiry of the Government is concerned, and it seems to me that the cross examination is traveling quite wide of the real matters that are presented by his direct examination and complained of by the Government, but as to that, of course, I do not rule. But I simply say and hold that he need not answer the question, as it is irrelevant and immaterial to the principal inquiry involved in the case.
- Mr. WILLIS: To which ruling I take exception.

2

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WILLIAM DEVERY, recalled for cross examination, resumes the stand and testifies as follows:

          Mr. GROSVENOR: Mr. Devery states that there are one or two small corrections he desires to make in his testimony. Where are they, Mr. Devery?

- 3       The Witness: On page 835: "What was the source of your information? A. I seen it in the Moving Picture World, an account of it." I was also informed by Dwight MacDonald, who was attorney for the Patents Company.

          Mr. KINGSLEY: I object to that as not being a correction of the witness' testimony, but an additional statement.

          Mr. GROSVENOR: What other change have you, or correction to make, Mr. Devery?

- 4       The Witness: Page 856: "If the Imperial Film Exchange took a customer that was on the books of any other exchange, of course, other than the independents, which they could not take on at any price"—that should be "which they could take on at any price." The word "not."

          Mr. GROSVENOR: What do I understand by your answer?

          The Witness: That you could take on—we could not take on a licensed exhibitor unless we first consulted with the

exchange that he was doing business with, but we were authorized to take on a customer of an independent exchange, if we took him on for nothing.

1

Mr. GROSVENOR: That is to say, if there was a licensed exhibitor who was considering changing his service from one licensed exchange to you, it was necessary under the rules for you to consult the licensed exchange at that time furnishing him service?

The Witness: Exactly.

2

Mr. GROSVENOR: But if the exhibitor who had in mind the changing of the service was not a licensed exhibitor, but taking independent service, you were allowed to take his service without consulting anybody?

The Witness: We were allowed to take him on at any price in order to get him away from the unlicensed exchange.

Cross examination by Mr. KINGSLEY:

3

Q. Under what rules do you mean? Mr. Grosvenor said you were allowed to do this under the rules. What rules?

A. The rules laid down by the Film Service Association.

Q. That was this local body of which your concern was a member? A. Yes, sir.

Q. Then the prices to exhibitors were not uniform? A. No.

Q. How long had you been serving the customer in Porto Rico at the time Mr. Kennedy complained he had found one of your films at the New York Roof Garden? A. About July, 1908.

4

Q. And you took on this customer in Porto Rico in July, 1908, some months after signing— A. (interrupting): No, we took it on previous.

Q. When did you say you took him on? A. We first entered in there before we signed a license agreement—we were with Mr. Marshall's partner.

Q. At any rate, you had this customer at the time you signed the license agreement? A. We did.

Q. And you did not report him to the Patents Company after signing the license agreement? A. No.



1 Q. You continued to serve him with film which you had rented from the Patents Company licensees? A. We did. Not with the film that we purchased from the Patents Company. We furnished him first with the films that we owned.

Q. And then, going on month after month, you continued to furnish him with motion pictures? A. We did. Now, I want to get that right. We had an agreement with Mr. Marshall of Porto Rico under the Imperial Moving Picture Company, which we were also, I will state, exhibitors. We used to do our own exhibiting.

2 Q. Then you were exhibiting, yourselves, in Porto Rico? A. Yes, sir.

Q. You were shipping film then to this exhibitor in Porto Rico? A. We were.

Q. And you were receiving a share of the profits? A. We were paid so much. Later, we changed the contract.

Q. But at the time Mr. Kennedy claimed that a reel of Biograph motion pictures had been discovered at the New York Roof Garden, Mr. Steiner stated that one reel, for which he could not account, had been shipped to this customer in Porto Rico? A. He did.

3 Q. You had been making a practice for some time of shipping licensed motion pictures to Porto Rico, had you not, at the time Mr. Kennedy made this complaint? A. We did.

Q. You never reported this Porto Rico man to the Patents Company until after Mr. Kennedy complained to you? A. We did not.

Q. You never collected any royalty for the use of the projecting machine that he employed in Porto Rico, and transmitted it to the Patents Company? A. We never did, nor we never collected any from Mr. Marshall.

4 Q. At the time that you were cancelled by the Patents Company, how much business do you say you were doing a year? A. A year?

Q. Well, I will change that. At the time you were cancelled by the Patents Company, what were your yearly profits? A. At the time we were cancelled, I should judge that we were making, or we had a profit of fifteen hundred dollars a week.

Q. You think you were making about \$75,000 a year, then? A. Close on to that.

Q. Is that net profit? A. Net.

1

Q. So that you were slightly mistaken on your direct examination when you said you were making \$50,000 a year? A. Well, I don't know. That is the way the lawyers put it. They had it at \$1,000 a week.

Q. How long had you been making these profits to which you testify today? A. Well, we gradually grew.

Q. For how long had you been making these large profits? A. I should judge from the first of the year. The first of that year. From January.

Q. How long had you been in business at that particular place as the Imperial Film Exchange? A. Since 1908; March 3rd.

2

Q. How many customers did you have when you signed the exchange license agreement with the Patents Company? A. I should judge about 80.

Q. And you had at that time three places, did you not, one in Troy, one in Washington, and one in New York? A. Yes.

Q. At the time of your cancellation, you had already made arrangements to dispose of your place in Washington, had you not? A. No, sir.

Q. What arrangement had you made with Mr. Moore of Washington, regarding his taking over the business? A. Mr. Moore was not to take over any business.

3

Q. What arrangement did he have with you then with respect to giving you a share of the profits of the business? A. He was to come in. He was to come in as a stockholder.

Q. You were going to incorporate that business in Washington? A. If you will listen, I will explain that. We were negotiating with Dwight MacDonald. Mr. Steiner was to retire. I was taking over Mr. Steiner's interest in the Imperial Film Exchange. We were going to make three separate corporations, that is, New York to be incorporated separately, Troy to be incorporated separately, and the Washington office to be incorporated separately. Mr. Moore was to take an interest in the Washington office.

4

Q. For how much was the Imperial Exchange in New York capitalized? A. \$25,000.

Q. Had you ever paid a dividend? A. No.

Q. Did you pay any salaries? A. We paid salaries, yes.

Q. I mean to yourself or Mr. Steiner. A. No, sir. We paid some. We were not particular about our salaries.

1 Q. When was it that you rented the place at 110 Fourth Avenue? A. That we rented the place?

Q. That the Imperial Film Exchange rented the place at 110 Fourth Avenue? A. That we leased the place?

Q. Have it your own way. When was it that the Imperial Film Exchange leased the place at 110 Fourth Avenue? A. I believe it was about the 1st of April.

Q. When was it that you were cancelled? A. The 15th of April; no, I beg leave to correct that. I would say about the first of March we leased it.

2 Q. About the first of March. It was leased in the name of the Imperial Film Exchange, was it not? A. It was.

Q. And the first money of the lease was paid by the Imperial Film Exchange? A. It was.

Q. This was leased for Mr. Steiner, who was contemplating establishing an independent business, was it not? A. It was what?

Q. This property was leased for Mr. Steiner? A. It was not.

3 Q. Where was Mr. Steiner intending to locate? A. At the same building. That is—now wait, I want to get that correct. At the time that this building was leased, Mr. Steiner had no intention of withdrawing from the Imperial Film Exchange. It was later.

Q. But later on, Mr. Steiner intended to go into the independent business at 110 Fourth Avenue, did he not? A. When he made his preparations to withdraw and resign from the company, it was I that suggested that he take over the 110 Fourth Avenue, as I thought I could get along with smaller quarters, and I took a lease on a building at 429 Sixth Avenue for the Imperial Film Exchange.

4 Q. And Mr. Steiner later on intended to go independent? A. He did.

Q. When was it that you took the lease at 110 Fourth Avenue? A. That I took it?

Q. Yes. A. About March.

Q. About the first of March, what year? A. 1910.

Q. Now, were any of the supplies at the Imperial Film Exchange taken to 110 Fourth Avenue? A. No.

Q. Were there any reels of film there? A. Belonging to the Imperial?

Q. Yes. At the time that you severed relations with the Patents Company? A. No.



Q. Were there any reels or films of any sort there at any time? A. That I don't know. 1

Q. Now, Mr. Steiner was intending to act as an independent manufacturer, was he, or did he intend to run an independent rental exchange? A. I believe he intended to run both. He was going as an independent manufacturer and an independent exchange.

Q. And he had decided upon this some time prior to the 15th day of April, 1910? A. No, I believe he decided on that very shortly. He did not have much time to consider. I believe it was at the time that the independents came to New York to have their convention, or hold their convention. 2

Q. When was it that Mr. Steiner resigned from the Imperial Film Exchange? A. We had a meeting about the 8th of April.

Q. And where was this meeting held? A. Down at Mr. Dwight MacDonald's office.

Q. And did he resign on the 8th of April? A. He tendered his resignation.

Q. And that was preparatory to going into the independent film business, was it not? A. Yes. 3

Q. And relations were severed between your company and the Patents Company on the 15th of April, the same year? A. On the 15th, yes.

Q. Something like a week afterwards? A. About that.

Q. There was a letter written by the Imperial Film Exchange to the Motion Picture Patents Company on or about the 15th of April, 1910, was there not? A. There was.

Q. In which the Imperial Film Exchange formally withdrew as the licensee of the Motion Picture Patents Company? A. There was.

Q. This letter was sent by special messenger to the Motion Picture Patents Company, was it not? A. That I don't know. 4

Q. You did not send it yourself? A. I did not; no.

Q. But you do know that such a letter was sent? A. I know there was such a letter.

Q. Did you see the letter before it was sent? A. I did not.

Q. Who signed this letter?? A. I believe Mr. Steiner.

Q. But Mr. Steiner, you say, had resigned on the 8th of April? A. Yes.

1 Q. So that he was still acting as an official of the company on that day? A. He was to act until the 15th, the day of the cancellation.

Q. Had he resigned, to take effect on the 15th of April?  
A. The 15th of April. The day we were cancelled.

Mr. KINGSLEY: I offer in evidence a copy of the letter sent by the Imperial Film Exchange to the Motion Picture Patents Company.

2 The Witness: I would like to explain that letter.

Mr. GROSVENOR: I object to this as being a copy, and produced by the defendants, the defendants having the original. They must have the original, as the letter was sent to them.

Mr. KINGSLEY: Will you consent to its going in subject to the original being produced?

Mr. GROSVENOR: If you will produce the original and let it be substituted—the original should be produced by the defendants if they ever received any original.

3 Mr. KINGSLEY: There is no question about it. I proved it by your own witness.

Mr. GROSVENOR: The witness wants to say something about this. I am willing he should say it if you want it.

Mr. KINGSLEY: Go ahead and say it.

The Witness: I will state in regard to that letter, that it was the worst piece of business that a lawyer ever could resort to.

4 Mr. KINGSLEY: You are going to characterize a lawyer?

The Witness: I am going to give you this straight.

Mr. KINGSLEY: Just wait a moment.

The Witness: Now you listen to me.

Mr. KINGSLEY: Wait a moment.

1

Mr. GROSVENOR: I submit that the witness should have an opportunity to explain this letter.

Mr. KINGSLEY: If he is going to characterize some lawyer, I don't want it. I don't know whom he means.

The Witness: I mean Dwight MacDonald.

Mr. KINGSLEY: I object to any scandalous and irrelevant matter.

Mr. GROSVENOR: I think the witness should answer in full, the question.

2

Mr. KINGSLEY: I have not asked any question. I thought he would make a statement which would be competent, on the record.

The Witness: I will state that Dwight MacDonald—

Mr. KINGSLEY (interrupting): I object to the statement going on the record respecting any lawyer at this time. If counsel wants to bring it out on his examination, that is between him and you.

3

The Examiner: Simply answer the question, and if you want to make an explanation later, you can do so.

Mr. GROSVENOR: What was the last question?

Mr. KINGSLEY: There was not any last question. I simply offered the copy of the letter in evidence, and you objected to it.

Mr. GROSVENOR: Will you read the question before the letter was offered?

The question is read.

4

Mr. KINGSLEY: I will ask the witness to step aside for a moment while I put on a witness to prove that the original of this letter is lost and we cannot find it.

The Examiner: Just step aside, Mr. Devery.



- 1 JOHN BRADEN, a witness produced on behalf of the defendants, being first duly sworn by the Examiner, testified as follows:

Direct examination by Mr. KINGSLEY:

Q. Where do you live? A. 106 West 13th Street.

Q. What is your business, Mr. Braden? A. Clerk at the Motion Picture Patents Company.

Q. And how long have you been in that position? A. Since March of 1909.

- 2 Q. Were you in the same position in the Motion Picture Patents Company in the month of April, 1910? A. Yes.

- Q. Did you ever see the original of a letter written to the Motion Picture Patents Company dated April 15th, 1910, signed "William Steiner, President," under the letter-head of the Imperial Film Exchange of 44 West 28th Street, New York City, and addressed to the Motion Picture Patents Company at No. 80 Fifth Avenue, New York City, in which the Imperial Film Exchange notified the Motion Picture Patents Company that it had that day withdrawn as a licensee of the Motion Picture Patents Company in respect to all of the three offices, at Troy, Washington, D. C., and New York? A. Will you read the first part of that question?
- 3

The question is read.

A. I did.

Q. Did you ever make a search for the original thereof in connection with any court proceeding? A. I did.

- Q. What proceeding was that? A. The Vitagraph Company of America versus the Imperial Film Exchange bankruptcy proceeding.
- 4

Q. And did you find it at that time? A. I did.

Q. And was it used in court? A. It was.

Q. Was it put in evidence? A. It was. But I don't think it was copied in the record.

Q. And have you ever seen it since? A. I have not.

Q. Have you searched for it since? A. I have searched for it since.

Q. Have you been able to find it? A. No.

Q. Was a true copy of it made at the time it was received at the office? A. Yes. Not at the time it was received. Some time later. 1

Q. Was a true copy made of it at the time it was sent to court in the action to which you have just referred? A. Yes, sir.

Q. And is this a true copy of it (handing paper to witness)? A. (witness examining paper): Yes.

Mr. KINGSLEY: That is all.

Cross examination by Mr. GROSVENOR: 2

Q. You say that you have seen the original of this letter? A. Yes, sir.

Q. Did you see it when it arrived, that is, did you see the original when it arrived at the office? A. Not when it arrived. Shortly afterwards. The letter was open when I saw it.

Q. You did not open the original? A. No.

Q. Have you any recollection as to when the original was received? A. You mean as to the date? It was received on the 15th of April, 1910. 3

Q. Did you receive it? A. No, sir.

Q. How did it come? A. It came by special messenger.

Q. By special messenger? A. I did not see the messenger. That is the report I got from the people in the office.

Q. And where did it come from? A. Imperial Film Exchange.

Q. Did it come from the Imperial Film Exchange or from the lawyers of the Imperial Film Exchange? A. I don't know where the messenger started from.

Q. Then you don't know where it came from, do you? A. No. 4

Q. Did you keep any record of its receipt, or the time of its receipt? A. The date was stamped on the original letter, but not the time.

Q. Does this copy show the date of the receipt of the original? A. No. At least, I don't think it does (examining paper). No.

Q. Did you keep the envelope in which the original was received? A. No.

1

Mr. GROSVENOR: That is all.

Mr. KINGSLEY: That is all. I now offer this in evidence.

The paper is marked Defendant's Exhibit 10, and is as follows:

**Defendants' Exhibit No. 10.**

COPY OF COPY SENT MR. KENNEDY UNDER DATE  
OF APRIL 19TH, 1910.

2

(Filed in Mr. Kennedy's Folder)

Original letter missing.

**THE IMPERIAL FILM EXCHANGE**

44 West 28th Street,

New York, April 15th, 1910.

The Motion Picture Patents Company,  
80 Fifth Avenue,  
New York City.

3

Gentlemen:

The Imperial Film Exchange hereby notifies you that it has this day withdrawn as a licensee of your company, in respect to all of the three offices at Troy, Washington, D. C. and this city. This company hereby surrenders each and all of the licenses which it has heretofore received from your company.

Respectfully yours,

(Signed) Wm. Steiner, Pres.

4

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WILLIAM DEVERY, recalled for further cross examination, testified as follows:

Cross examination resumed by Mr. KINGSLEY:

Q. Were you a witness in the case of the Greater New York Film Rental Company versus the Biograph Company



and the General Film Company? A. For the Greater New York? 1

Q. Yes. A. I was.

Q. And you gave testimony, didn't you, in that proceeding? A. I did.

Q. And did you swear in that proceeding that prior to the cancellation, you and Mr. Steiner only drew out necessary expenses from the proceeds of your business? A. I did.

Q. Did you also swear that preparations had been made to open the William F. Steiner Film Exchange at 110 Fourth Avenue, prior to cancellation? A. Did I swear that? 2

Q. Yes. A. I don't think I did.

Q. Did Mr. Steiner send out any notices regarding the new place? A. That I don't know.

Q. At the hearing of the Greater New York Film Rental Company versus the Biograph Company and the General Film Company, regarding which you have just testified, was this question asked you: "Q. Immediately after the cancellation of the license by the Motion Picture Patents Company, was not an office opened at 110 Fourth Avenue, New York City, under the name of the William F. Steiner Film Exchange, and was not property of the Imperial Film Exchange taken to that office?" Was that question asked you? A. I believe it was. 3

Q. And was this question asked you, "And that office was leased, was it not, in the name of the Imperial Film Exchange?" and did you make this answer: "A. Not that office. The building." Is that correct? A. That is correct.

Q. What did you say about Mr. Steiner having sent out notices regarding the new place? A. I don't know that he sent out any.

Q. You don't know whether he did or not? A. I do not. 4

Q. What was the total amount of the assets which the Receiver reported? A. The Receiver reported?

Q. Yes. The Receiver of the Imperial Film Exchange. A. Eleven thousand and some-odd dollars.

Q. And what was the total amount of the liabilities at that time reported by the Receiver of the Imperial Film Exchange?

Mr. GROSVENOR: I object to all this as immaterial.

1 A. I don't know that he reported any, to my knowledge.

By Mr. KINGSLEY:

Q. Well, what was the total amount of the liabilities at that time? A. The total amount of the actual liabilities were about \$3,000.

Q. When you stated on your direct examination that you had made an agreement with Mr. Moore of Washington to take over that office, that was the agreement to which you have just referred in your testimony? A. No, it was not.

Q. What was that agreement? A. The agreement on that was when our license was cancelled, Mr. Moore was in New York, on the 15th day of April, on which all the assets and the business was to be turned over. Mr. Steiner was to retire. Mr. Moore came. We had the cancellation. That was the best we could offer Mr. Moore. Mr. Moore went down and seen Mr. Kennedy in regard to it. He seen Mr. Kennedy and came back the following day, Saturday, the 16th day of April, and told me that if he could take over the business of the Imperial Film Exchange at Wash-  
3 ington, that Mr. Kennedy would give him a license. I told him that I would have to consult with the lawyers, and at that time we did not have any lawyers, first. He told me that every dollar he had in the world was invested in the place, and that if he did not get a license and had to go out of business, he was ruined. Therefore, I agreed to turn the office then and there over to Tom Moore for \$5,000, the business.

Q. That was the agreement to which you referred on your direct examination. Did you read the report of the Special Master which was read into the record at the first  
4 hearing in this case in which you were sworn? A. I did not.

Mr. GROSVENOR: Are you referring to the report of the referee in bankruptcy?

Mr. KINGSLEY: Yes. Reported at page 841 of the printed minutes.

By Mr. KINGSLEY:

Q. When you swore a few moments ago that the lia-

bilities of your exchange were about \$3,000, did you know that the Special Master, John J. Townsend, who reported upon the condition of your exchange, found that the liabilities were \$13,700? A. I did not know anything of the kind. He said that was a matter for the courts at the time of the bankruptcy to decide. 1

Q. And that is set out at page 845 of the printed record?

A. There was over \$11,000 protested.

Mr. KINGSLEY: I now offer in evidence decision of the Circuit Court of Appeals, Second Circuit, made May 16th, 1912, entitled, In re Imperial Film Exchange, which appears at page 80 of Volume 198 of the Federal Reporter, and ask that it be incorporated into the record. 2

The same is marked Defendant's Exhibit 10a, and is as follows:

**Defendants' Exhibit No. 10A.**

**In re IMPERIAL FILM EXCHANGE.**

(Circuit Court of Appeals, Second Circuit. May 16, 1912.) 3

**No. 42.**

**1. BANKRUPTCY (§ 72\*)—CORPORATIONS SUBJECT TO ACT—  
"TRADING" OR "MERCANTILE PURSUIT."**

A corporation engaged principally in the business of renting films for moving pictures is not engaged in trading or a mercantile pursuit which renders it subject to adjudication as an involuntary bankrupt under Bankr. Act July 1, 1898, c. 541, § 4b, 30 Stat. 547 (U. S. Comp. St. 1901, p. 3423), as amended by Act Feb. 5, 1903, c. 487, § 4, 32 Stat. 797 (U. S. Comp. St. Supp. 1911, p. 1494). 4

[Ed. Note.—For other cases, see Bankruptcy, Cent. Dig. § 17; Dec. Dig. § 72.\*]

For other definitions, see Words and Phrases, vol. 5, pp. 4477-4478; vol. 8, p. 7053.

What persons are subject to bankruptcy law, see note



1 to Mattoon Nat. Bank of Mattoon, Ill., v. First Nat.  
Bank of Mattoon, Ill., 42 C. C. A. 4.]

2. BANKRUPTCY (§ 81\*)—CORPORATIONS—SUFFICIENCY OF  
PETITION.

It is not enough to give a court of bankruptcy juris-  
diction to adjudicate a corporation an involuntary  
bankrupt under Bankr. Act July 1, 1898, c. 541, § 4b,  
30 Stat. 547 (U. S. Comp. St. 1901, p. 3423), as  
2 amended by Act Feb. 5, 1903, c. 487, § 4, 32 Stat. 797  
(U. S. Comp. St. Supp. 1911, p. 1494), to allege that a  
part of its business is within the statute, but the peti-  
tion must allege that to be its principal business.

[Ed. Note.—For other cases, see Bankruptcy, Cent.  
Dig. §§ 59, 113-118, 125; Dec. Dig. § 81.\*]

Appeal from the District Court of the United States for  
the Southern District of New York.

In the matter of the Imperial Film Exchange, alleged  
bankrupt. Appeal from an order dismissing an involuntary  
petition vacating an order appointing a receiver, approv-  
3 ing a report of the master, etc. Affirmed.

Waldo & Ball (G. E. Waldo, of counsel), for appellants.

Luce & Davis (Seward Davis, of counsel), for appellee.

Before COXE, WARD, and NOYES, Circuit Judges.

PER CURIAM. [1] From what is shown in the record,  
outside the pleadings, concerning the business of the alleged  
bankrupt, it seems clear that its principal business was that  
of renting films for moving pictures and that it was not a  
corporation principally in trading or mercantile pursuits  
within the meaning of the provisions of the bankruptcy  
4 act as they existed when the petition was filed.

The Supreme Court has approved the definition of a  
“trader” as “one who makes it his business to buy merchan-  
dise of goods or chattels to sell again for the purpose of  
making a profit.” And the Supreme Court has also said  
that a “mercantile pursuit” is trading in the larger sense.  
Toxaway Hotel Co. v. Smathers, 216 U. S. 439, 30 Sup. Ct.  
263, 54 L. Ed. 558.

It seems too clear for argument that a corporation which  
leases moving picture films is not engaged in trading as  
above defined, and, indeed, in several recent decisions this

court has held corporations outside the act whose business much more nearly approached trading than that of the alleged bankrupt. See *Re Wentworth Lunch Co.*, 159 Fed. 413, 86 C. C. A. 393, affirmed 217 U. S. 591, 30 Sup. Ct. 694, 54 L. Ed. 895; *Re Kingston Realty Co.*, 160 Fed. 445, 87 C. C. A. 406; *R. Altonwood Park Co.*, 160 Fed. 448, 87 C. C. A. 409.

[2] The only ground upon which the petitioners can possibly stand is that their petition alleged upon its face the necessary jurisdictional facts and that they were not controverted. And, if the petition were sufficient, there would be much foundation for this contention because it appears that the corporation did not deny in its answer the allegations concerning the nature of its business.

The relevant averments of the petition are these:

"That the said Imperial Film Exchange, for the greater portion of six months preceding the date of the filing of this petition, has been engaged in the business of selling and leasing moving pictures, films, machines, and accessories for the exhibition of moving pictures, and has its principal place of business at No. 44 West Twenty-Eighth street, borough of Manhattan, city of New York. That the said Imperial Film Exchange is not a wage earner, nor person engaged chiefly in farming or the tillage of the soil, and is not a national bank or bank incorporated under the state or territorial laws, and your petitioners further allege that the said Imperial Film Exchange owes debts to the amount of \$1,000 and over."

Assuming that the business of selling moving picture films, machines, and accessories is within the act, the difficulty is that it is not alleged that the principal business of the corporation was such selling. It was not enough to allege that a part of the business of the corporation was within the statute. It was necessary to allege what its principal business was. As said by the Supreme Court in *Toxaway Hotel Co. v. Smathers*, *supra*:

"It may have been engaged in doing two distinct kinds of business. But unless this corporation was 'engaged principally' in mercantile pursuits it was not amenable to the act."

Taking the petition as it stands, there is nothing to negative what appears to have been the fact that the principal business of the corporation was leasing picture films,

1 although occasional sales were made. As already stated, there is no allegation that the corporation was "engaged principally" in a business which brought it within the bankruptcy act.

For these reasons, it must be held that the corporation in question was not subject to be adjudicated a bankrupt, and that the District Court was without jurisdiction of the proceedings further than to determine whether the corporation came within the act. Additional jurisdiction could not be conferred upon it by any waiver or by any attempt of the parties to try immaterial issues.

2 The order of the District Court, in so far as it dismisses the petition and vacates the order appointing a receiver, is affirmed. But such order in so far as it approves and confirms the findings and report of the special master is reversed; the District Court having no jurisdiction to pass upon the subjects involved therein.

Costs of this court are awarded to the appellee corporation. The corporation should also recover costs in the District Court, but should not recover such costs as grew out of its failure to raise and litigate the jurisdictional question.

3 By Mr. KINGSLEY:

Q. Was anything said to you by the representatives of the Patents Company relative to the royalties upon projecting machines used in Porto Rico? A. No.

Q. After the Patents Company learned that you were supplying an exhibitor in Porto Rico? A. Yes; they told us to pay the back royalties.

4 Q. How much did those back royalties amount to? A. I believe it figured up about two hundred and twenty-five dollars—that is, with the fines.

Q. So that, at the time the letter of withdrawal was sent to the Patents Company you were then liquidating these back royalties? A. Yes, sir.

Q. Did Mr. Steiner ever sell his interest to you? A. No, I wouldn't buy it.

Q. The larger part of the films on hand, at the time you withdrew from your license arrangement, were licensed films, were they not? A. How do you want to say "withdrew"? Why don't you say "cancelled"?

Q. Because you wrote a letter withdrawing. A. I don't know that I claim—



Q. You have just sworn to it. A. If that letter stood, why, we would get two weeks' notice, would we not? 1

Q. Well, at the time you wrote this letter— A. I didn't write any letter.

Q. Well, at the time this letter was written what kind of films did you have on hand, licensed, or unlicensed? A. Licensed films.

Q. Was the company which Mr. Steiner was about to start the Yankee Film Company? A. I don't know anything about what Mr. Steiner was to start.

Q. Oh, you don't? A. No, sir.

Q. Did he subsequently start the Yankee Film Company? A. I believe so; yes. 2

Q. And where was that located? A. 32nd Street.

Q. Did you in July, 1912, sell or rent reels of licensed film to McIntyre and Richter, at 23 West 24th Street?

Mr. GROSVENOR: Objected to as immaterial.

The Witness: Did I?

Mr. KINGSLEY: Yes. 3

The Witness: I sold them some reels; I don't know whether licensed or not.

By Mr. KINGSLEY:

Q. Were they subsequently replevied by the Patents Company? A. I believe some of them.

Redirect examination by Mr. GROSVENOR:

Q. Mr. Devery, this Porto Rico exhibitor that you referred to, you had been supplying, you say, since the middle of 1908? A. We entered into a partnership first with Mr. Marshall. We had a theater, and we sent the reels down on a percentage basis. 4

Q. And that was in the year 1908? A. Yes, sir.

Q. And long before the Patents Company was formed? A. Yes, it was.

Q. And then this projecting machine respecting which you have been asked questions on cross examination, that is, as to whether or not you paid the royalties after the

- 1 Patents Company was formed, that projecting machine was acquired before the Patents Company was organized?  
A. It certainly was.

Q. And at the time that it was acquired was there anything said about paying two dollars per week royalty on it?

Mr. KINGSLEY: Objected to, as the question is leading.

The Witness: No.

- 2 By Mr. GROSVENOR:

Q. Now, it appears in this case that your notice of cancellation, and by "your notice" I mean the cancellation notice received by the Imperial Film Exchange, is dated April 15?

A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. Defendants' counsel have introduced a copy of a letter appearing to be signed by "William Steiner, President of the Imperial Film Exchange," of the same date—is that right?

A. Yes, sir, that is right.

- 3 Q. Now, as I understand your testimony, William Steiner had resigned from the presidency of your company a week before that? A. Yes.

Q. Namely, on April 8th, effective April 15th? A. Yes, sir, to take effect on April 15th.

Q. Do you know whether or not any letter of the character or general tenor of that letter introduced by defendants was sent about the time indicated, namely, April 15th, to the Patents Company? A. I do.

Q. Please state the circumstances under which such a letter was sent to the Patents Company?

4

Mr. KINGSLEY: Objected to, on the ground that the letter speaks for itself.

By Mr. GROSVENOR:

Q. Go ahead? A. It was about the time that the Roosevelt African Films, that was the title, it was two reels by Pathe Freres, of which we were buying three prints at four hundred dollars a print, that is, twenty cents a foot that they were charging. Now, we had to have one in Washing-

ton, and one in Troy, and one in New York, and were buying a print for each place. Pathe had already sent the film to New York and Troy, and we got a letter that morning from Mr. Moore, in Washington, stating that he did not receive the film, and that they were putting it up at the rate of fifty dollars a day—what they were getting for the film, and Mr. Steiner then called up Pathe Freres, and asked them if they had sent the film to Washington yet, and they informed him, “No”— 1

Q. Was this on the 15th of April? A. Yes, sir.

Q. In the morning? A. Yes, sir, and Mr. Steiner asked them when they intended to ship it, and they told him they did not intend to ship it, and he wanted to know the reason why, and they told him his license was cancelled. 2

Q. Was this in the morning before you received the notice of cancellation, dated April 15th? A. From the Patents Company.

Q. Is that right? A. Yes, sir; that was before we received the notice.

Q. Then what happened? A. We immediately called up our attorneys, MacDonald & Bostwick, who were the attorneys for the Patents Company.

Q. Is that Dwight MacDonald that was the general manager of the Patents Company at that time? A. Dwight MacDonald, yes, sir. 3

Q. Was he the general manager of the Patents Company? A. No, sir; not at that time, but previous to that time.

Q. He had been? A. Yes, sir.

Mr. KINGSLEY: How long previous to that time?

The Witness: Up to the first of January.

By Mr. GROSVENOR: 4

Q. Well, please continue, Mr. Devery? A. Mr. MacDonald answered then, and Mr. Steiner told him he understood our license was cancelled, and to use a term they were using then, Mr. MacDonald told Steiner to “beat them to it,” and he dictated a letter over the phone to Mr. Steiner to send to the Patents Company, and to get ahead of the Patents Company’s cancellation. Now, he informed us at that time if we got ours in ahead we would have two weeks, be-



- 1 cause they could not cancel immediately—he said, “You will get in two weeks”—

Mr. KINGSLEY: I object to that as hearsay.

Mr. GROSVENOR: Yes, eliminate as much of the conversation as you can, Mr. Devery.

By Mr. GROSVENOR:

Q. Then you sent this notice? A. Mr. Steiner sent it.

Q. Did you know about its being sent? A. He told me.

- 2 Q. At the time? A. Yes, he told me.

Q. And that was sent to the Patents Company? A. Yes, sir.

Q. And when did you receive, then, their notice of cancellation? A. We received it just as soon as the other one went out, and then Mr. MacDonald withdrew from the case, and refused to have anything to do with us after instructing us to send that. That is what we got. I have got a letter to show where his close relations with the Patents Company compelled them to withdraw—

- 3 Mr. KINGSLEY (interrupting): Objected to, as incompetent.

The Witness: He is a fine fellow to have—

Mr. KINGSLEY (interrupting): Produce the letter. If he has such a letter let him produce it.

The Witness: I have got the letter.

By Mr. GROSVENOR:

- 4 Q. The attorney who advised you to send this letter to the Patents Company had been previously connected with the Patents Company, and severed his relationship with you?  
A. Immediately after he told Mr. Steiner to send that letter.

Recross examination by Mr. KINGSLEY:

Q. Well, Mr. Steiner told you then about this conversation with your lawyer? A. No, I heard that.

Q. You couldn't hear what the lawyer said? A. No, I could not hear that.

Q. But Mr. Steiner told you what the lawyer stated? A. 1  
No, I heard Mr. Steiner, or, I seen Mr. Steiner taking the  
letter over the telephone.

Q. And then the letter was sent out? A. Yes, by Mr.  
Steiner.

Q. Saw it? A. No, I didn't read it.

Q. You heard it being taken down— A. Now, listen—

Q. Well, you listen— A. All right.

Q. You heard it being taken down? A. Yes.

Q. And you knew it was going out? A. Yes, sir, it was  
taken down and typewritten.

Q. And the idea was, you wanted to get it over to the 2  
Patents office as soon as possible? A. Yes, sir, according to  
instructions, to beat them to it.

Q. Who bought this projecting machine that was used in  
Porto Rico? A. The Imperial Film Exchange.

Q. Did you know what machine it was? A. I did, yes.

Q. What make was it? A. It was a Powers, No. 4.

Q. Now, when did you buy it? A. We bought it in about  
1906.

Q. And was that the same machine that was down there  
in 1910? A. In 1910, not any machine of ours down there, in 3  
1910.

Q. What machine was down there in 1910? A. I don't  
know what he had.

Q. How long did the Powers No. 4 you bought in 1906  
last? A. It was down there about a year.

Q. You sent it back in 1907? A. He sent it back when  
we changed the agreement.

Q. And you don't know what machine was down there  
after 1907? A. No, sir, not after he sent back the first ma-  
chine.

Q. And you did not want us to understand that the ma- 4  
chine you bought in 1906, was there right along up until  
1910? A. No, sir, I did not.

Q. When you testified in answer to Mr. Grosvenor's ques-  
tion? A. No, sir; I didn't want you to understand that.

Q. And you don't know what machine was down there at  
the time you signed the license agreement? A. Yes, sir, at  
that time our machine was down there.

Q. I thought you said it came back in 1907? A. I said  
it didn't go down there until 1908, and that it came back  
in July, or August, of 1909, that is my recollection.

1 Q. That is your testimony? A. That is the way I want it.

Q. At any rate, after July, 1909, you don't know what machine he had down there? A. No, sir, I did not.

Q. Prior to that it was a Powers No. 4? A. Yes, sir.

Q. You bought it yourself? A. No, I didn't buy it, the Imperial Moving Picture Company bought that, a co-partnership.

Redirect examination, by Mr. GROSVENOR:

2 Q. Mr. Devery, you were interrupted in making several answers during your cross examination. Is there any answer which you wish to fill out with a further statement, or have you said all that you care to say as to any of those matters? A. I guess we have corrected everything.

Q. Did Mr. Kennedy ever make any inquiry about what kind of a machine that was that was being used down in Porto Rico? A. No, sir.

---

3 Thereupon THOMAS H. BATES, resumed the stand for cross examination.

Cross examination by Mr. KINGSLEY:

Q. When was it, Mr. Bates, that you took the moving pictures of your boy? A. It was in June, I think, 1911. I think it was.

4 Q. Now, were these pictures taken upon a translucent or transparent film with small photographs about an inch by three-quarters at equal intervals from each other throughout its length and depicting the character of and change in the movements of the boy? A. Yes, the entire matter of the furnishing of the film and cost of getting up the motion picture, so as to be satisfactory to me, was left to the operator, or man, that I gave the contract to.

Q. And were there perforations along the side of the film? A. I don't recall that at all.

Q. You don't recall that at all? A. No, sir.

Q. Did you ever have occasion to examine the projecting machine in which the pictures were shown at any of the theatres? A. No, sir.



Q. Did you ever look at the mechanism of it at all? A. 1  
No, sir.

Q. You never took any interest in that? A. No, sir,  
not in the machine.

Q. You were satisfied when a clear-cut picture was put  
upon the screen? A. Yes, sir.

Q. Who was the operator who made these picture? A.  
Mr. Bosworth.

Q. How do you spell it? A. (spelling): B-o-s-w-o-r-t-h.  
Bosworth.

Q. Where does he live? A. He had his place on Bloom- 2  
field Street in the Wesleyan Building.

Q. Did you happen to know, Mr. Bates, what sort of  
camera he was using? A. I did not.

Q. You didn't pay any attention to that either? A. Well  
the only thing I know about that was he told me he had  
bought it from Mr. Keith.

Q. Is he the amusement Keith, you mean by that? A.  
Yes, sir, the amusement Keith, theatre man.

Q. Now, you were sure that this picture was taken in  
June, of 1911? A. Well, we took it at different times,  
We couldn't take it all at the same time; we had several sit- 3  
tings because sometimes the temperature was not right, and  
the conditions were not favorable for the taking of a picture,  
so we took a little at a time, and would go on that way until  
finally we perfected the picture.

Q. Prior to the taking of the picture, had you ever ex-  
hibited the boy without the picture? A. Never.

Q. Had you ever lectured upon him without the picture?  
A. No, sir.

Q. After taking the picture, did you lecture upon the boy  
in connection with the motion picture? A. Yes, I did.

Q. When these pictures were exhibited at the theatre 4  
you received how much per week, on an average? A. Well,  
never less than fifty dollars a week.

Q. And sometimes as high as seventy-five dollars, you  
stated? A. Yes, sir; as high as seventy-five dollars.

Q. Now, when you made an engagement with a theatre  
the price paid included the use of the moving picture, includ-  
ing the services of the boy and of yourself? A. Well, no,  
not the services of the boy, because the boy could not be put  
in service, for the reason that there is a child labor law in  
Massachusetts that prohibits that.

1 Q. Could you produce him at all? A. The only way he could be produced so as to evade the responsibility of the law was to have him in the audience as a spectator of his own picture, and invite him from the audience to the stage and up on the platform, and let the audience look at him.

Q. And you always did that? A. Yes, sir.

Q. When you lectured? A. Yes, sir.

2 Q. The entertainment which you gave was an entertainment consisting of the motion picture of the boy, your own lecture, interesting and instructive, and the fact that the boy was brought forward as demonstrating the success of your method of rearing children? A. Well, no, I don't claim that honor—my method of raising children—I am afraid I might make quite a number of benedicts jealous if you give me that honor.

Q. At any rate, the boy was a part of the entertainment, and your lecture was an instructive feature of it? A. Yes, sir.

Mr. GROSVENOR: In the same way as is done with the use of moving picture films, isn't that true?

3 The Witness: Yes, sir.

By Mr. KINGSLEY:

Q. Now, you wrote to the Edison people, didn't you, asking them their rates for making a motion picture for you? A. Yes, sir, I did.

Q. And is this the letter which you received in reply to your first communication to the Edison people? A. (examining paper): Yes, sir.

4 Mr. KINGSLEY: I offer it as Defendant's Exhibit No. 11.

The paper referred to was marked by the Examiner "Defendants' Exhibit No. 11," and is as follows:

**Defendants' Exhibit No. 11.**

1

(Names of executive officers.)

THOMAS A. EDISON, INCORPORATED

Successor to

EDISON MANUFACTURING CO.

Main Office and Factory,

Orange, N. J.

Edison Projecting Kinetoscopes and Films.

2

Orange, N. J., April 28, 1911.

Dic. 27th.

Mr. Thos. H. Bates,  
133 Moreland Street,  
Roxbury, Mass.

Dear Sir:

We acknowledge herewith receipt of your letter of the 25th inst., all bearing on your having special Motion Pictures made and their exhibition, and in reply we would advise you that this condition is governed entirely by the Motion Picture Patents Company, 80 Fifth Avenue, New York City, and we recommend that you write them a letter asking if there is some means whereby you can exhibit these special pictures in the regular Theatres. Take this up fully with them stating the exact facts in the case and perhaps some arrangement can be made, but unless their consent is obtained they cannot be shown in Licensed Theatres.

3

Very truly yours,

THOMAS A. EDISON, INCORPORATED.

4

Kinetograph Department.

J. Pelzer, Sales Manager.

ES

File J. B.

---

The Witness: Am I permitted to look at that letter again?

Mr. KINGSLEY: Yes (handing witness Defendants' Exhibit No. 11).



- 1 The Witness (after looking at Defendants' Exhibit No. 11) : Yes, sir; that is right.

By Mr. KINGSLEY :

Q. I show you a letter dated July 31, 1911, and ask you if it is in your handwriting? A. Yes, that is in my handwriting.

Q. And is that a letter which was sent to the Motion Picture Patents Company? A. Yes, that is it.

- 2 Mr. KINGSLEY : I offer that letter in evidence.  
The paper referred to was marked by the Examiner "Defendants' Exhibit No. 12, and is as follows :

**Defendants' Exhibit No. 12.**

133 Moreland St.  
Roxbury, Mass., July 31st, 1911.

Dear Sir :

- 3 I am writing you at the request of a dealer in Moving Picture material. The Motion Picture Film of "Baby Hercules" is for sale. He is recognized the strongest baby ever born into the world as well as the most athletic. His acts are incredible of belief till witnessed on the screen. He did his acts when 22 months old. He is now 24 months old. His renown is mentioned in all the leading papers, The "Los Angeles Examiner," "San Francisco Examiner," Chicago American, N. Y. Journal, Boston American, English and French newspapers. See N. York Journal of July 30th, 1911. The Hearst newspapers had extended notices of him with  
4 Pictures.

He is unequalled in his feats of strength in the world, and is acknowledged the world's Baby Hercules. The pictures are excellent. Clear as the sun about 620 feet.

You could use them to financial advantage in every picture theatre in the country now that the child has had a world of advertising. The pictures have been shown one

week at a salary of \$45. I want to go into other business, 1  
the reason for selling.

Yours respt,

Thos. H. Bates.

---

By Mr. KINGSLEY:

Q. Did you, on or about August 5th, 1911, or afterwards, 2  
receive a letter of which I show you a copy (handing witness  
a paper)? A. You mean that I received a copy of this letter?

Q. Well, the original of this letter? A. I have no knowl-  
edge of having received the original of that letter, but I don't  
deny that I did receive it.

Q. You do remember receiving some letters about that  
time? A. I have no knowledge of having received any letter  
of that kind, but I don't deny it, of course, if I did.

Mr. KINGSLEY: I offer it in evidence.

The paper referred to was marked by the Exam-  
iner "Defendants' Exhibit No. 13," and is as follows: 3

**Defendants' Exhibit No. 13.**

(Copy.)

August 5, 1911.

Mr. Thomas H. Bates,  
133 Moreland St.,  
Roxbury, Mass.

Dear Sir:

We thank you for yours of the 31st, but we are not in a 4  
position to make use of the films referred to.

Thanking you, we remain,

Yours truly,

MOTION PICTURE PATENTS CO.

By

HNM/HLC  
File, J. B.

1 By Mr. KINGSLEY:

Q. I show you a letter dated October 14th, 1911, and ask you if it is in your handwriting? A. Yes, it is.

Q. Addressed to the Motion Picture Patents Company, is it? A. Yes, sir; it is in my handwriting.

Mr. KINGSLEY: I offer it in evidence.

The paper offered in evidence by counsel was marked by the Examiner "Defendants' Exhibit No. 14," and is as follows:

2

### **Defendants' Exhibit No. 14.**

133 Moreland St., Rox., Mass.

Boston, Oct. 14th, 1911.

Dear Sir:

I am compelled to write you about a matter that I believe you will concede is to me an injustice.

3 I had made a Moving Picture of the athletic acts of my little son who had exhibited remarkable strength. He was only 22 months old when he could raise with one hand a 20 lb. dumb Bell and do acts upon the trapeze marvellous for one so young. He appeared to large and enthusiastic audiences in Boston and Portland Maine. I lecture and explain to the people the features as they are unwound from the Film, and present the child to the people.

4 The act is a vaudeville act, but your agent has interposed and threatened to withdraw the syndicate Films from any theatre permitting me to lecture and show my film. This is Blacklisting me and taking the bread out of the mouths of my family, because I don't make films for sale. The one I own is the only one of its kind in the country, and was made by a local photographer here, for myself alone, and how he could say that it was a competitive film is beyond understanding. My use of the film is to explain the acts of the child, and describe his training. He has now by his act forbidden me to be employed by any theatre using your films, virtually telling me to starve.

I am sure you do not approve of this and write to you a concise statement of the case. I am in receipt of letters from managers who would employ me were it otherwise. I



await your answer before presenting the case to the U. S. Attorney General. 1

Respt yours,

Thos. H. Bates,  
133 Moreland St.,  
Roxbury, Mass.

(Stamped:

Received 1911

Oct 16 A M 8:54

Ans. H. N. M. 10/20/11 M M) 2

File, J. B.

By Mr. KINGSLEY:

Q. I show you a letter dated August 16, 1912, and I ask you if your signature appears at the bottom, and if you sent that letter to the Motion Picture Patents Company? A. I did; I wrote this letter.

The Witness: Yes, sir. The Attorney General has got copies of all those letters. 3

Mr. KINGSLEY: I offer it in evidence.

The paper offered in evidence by counsel for defendants was marked by the Examiner "Defendants' Exhibit No. 15," and is as follows:

**Defendants' Exhibit No. 15.**

139 Roxbury Street, Roxbury, Mass.  
August 16, 1912. 4

To the Motion Pictures Patents Company,  
New York, N. Y.

Gentlemen:

I notice that the United States Government has at last declared against your unjust and selfish monopoly. I have suffered, and my children have suffered on account of the very arbitrary and cold blooded manner of your local agent here, in Boston, Mr. Marston, through whom I have been

- 1 forbidden the benefit of engagements in theatres where your pictures were in use, notwithstanding I had the written assurance, witnessed, of managers of theatres who were anxious to engage my picture, but dare not because of Marston's threat.

Remember I have their statements in writing and shall give them to the United States Attorney General, to be used by him against you. Mr. Marston declared he would not let me use three feet of moving picture of my little boy, the "Baby Hercules of the World,"—not even if I starved—this in the presence of my wife in his sales room.

- 2 I have the written letters of several managers as proof, as well as witnesses that they would employ me only for Marston.

I regret I have to write you in this vein, because I believe could I have dealt with some affable and diplomatic person, vested with authority from you, the necessity would never have arisen to do so.

Respectfully yours,

THOMAS H. BATES.

- 3 Rubber Stamp  
Received  
1912 Aug 19 AM 9 08  
Ans. 8/26/12  
H. N. M.  
A. C. L.  
File, J. B.

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By Mr. KINGSLEY:

- 4 Q. I show you a letter dated August 26, 1912, addressed to you, and ask you if you received such a letter? A. I did. The Attorney General has the original of that letter.

Mr. KINGSLEY: I offer it in evidence.

The paper offered in evidence by counsel for defendants was marked by the Examiner "Defendants' Exhibit No. 16," and is as follows:

**Defendants' Exhibit No. 16.**

1

(Copy.)

August 26th, 1912.

Mr. Thomas H. Bates,  
139 Roxbury Street,  
Roxbury, Mass.

Dear Sir:

We find it difficult to reconcile your letter of August 16th with ours of January 10th, 1912. We offered to license your picture after taking considerable trouble to investigate the circumstances in your case.

2

Yours truly,  
MOTION PICTURE PATENTS COMPANY  
By

HNH/ACL.  
File, J. B.

3

By Mr. KINGSLEY:

Q. So the Attorney General has the originals of these letters sent you by the Motion Picture Patents Company, and also copies of the letters which you wrote? A. Well, he is supposed to have them; yes, sir.

Q. So you were slightly mistaken this morning when you stated you did not have a copy available of the first letter you wrote to the Motion Picture Patents Company? A. I may have been in error in that respect, and I may not have a copy, but I will look for it.

4

Q. At any rate, the Attorney General has it? A. That letter, of course, may have been omitted; I may not, of course, have sent him that letter.

Q. You don't know whether you did or not? A. I won't be positive, but I am pretty sure there are but very few but what he did have copies of.

Q. Well, I rather thought so. A. Yes, sir, there may be one, though.



1 Q. Now, this typewritten article, entitled, "Petitioner's Exhibit No. 181"— A. (interrupting): Yes, sir.

Q. And which you stated this morning you did not write? A. Yes.

Q. You recognize it, do you now, as something you dictated? A. Yes, sir, I dictated it.

Q. So when you said, "I didn't write it," or words to that effect, you didn't want to be understood that it was not an emanation from your brain? A. No, sir, not at all; I am perfectly willing to be responsible for it.

2 Mr. GROSVENOR: It is my recollection that on direct examination it was brought out that that letter now held by Mr. Kingsley, Petitioner's Exhibit No. 181, was written under your direction?

The Witness: Yes, sir.

By Mr. KINGSLEY:

Q. Did you ask anyone else to sign this? A. Not that letter; no, sir.

3 Q. Did you ask them to sign any other similar letter? A. Yes, I did; at the time that letter was sent I was under engagement with this manager, and he withdrew the engagement.

Q. Did you have other copies of this stricken off? A. No, sir.

Q. Did you have similar statements written out in type-writing? A. Yes, sir, I had one other one, I think; one other one.

Q. This is dated October 13, 1911? A. Yes, sir.

4 Q. I notice that you refer to the "New York Syndicate of Moving Picture Films Company"? A. Yes, I didn't understand the name exactly at that time.

Q. At that time you had already written to the Motion Picture Patents Company, had you not? A. Yes, sir, but I kind of got the names confused in my memory. It is sometimes called the Motion Picture Patents Company, and sometimes the New York Film Trust Company, and sometimes called one thing, and sometimes another; and sometimes the United Film Company, and sometimes another company, and so on, but that manager was using the Motion

Picture Patents Company's films, and had made the engagement and cancelled the engagement. 1

Q. I notice that in your letters to the Patents Company you refer to your part of the exhibition in the theatres as a "vaudeville act." A. Yes, I called the attention of the Motion Picture Patents Company to that title, thinking that, perhaps, they would be willing to overlook the other because of the use of the film, by allowing it to go on as a vaudeville act.

Q. You thought it was a vaudeville act when you called it one? A. No.

Q. You did not? A. No, sir, it could not be. 2

Q. Did you mean to make them think it was a vaudeville act if you didn't think so? A. It was a motion picture, of course. It couldn't be a vaudeville act, but if they allowed it to go by or under the name of a vaudeville act—

Q. You were willing that they do so? A. Yes, sir, I was trying to see if they would do it.

Q. And you were helping them let it go by as a vaudeville act? A. No, they understood the business, and if they wanted to consider it that way, it was up to them to do so.

Q. You lectured, you say? A. Yes, sir. 3

Q. And the child came forward on the stage? A. Not frequently. You see, I was amenable to the law, and I couldn't take the child upon the stage and connect him as a part of the performance, but I could take him from the audience as a spectator, and with the courtesy of the management let him stand on the stage in front of the audience, and identify him with his picture.

Q. And did you always do that? A. No, sir.

Q. Did you show in other States? A. Yes, sir, in Maine.

Q. In the State of Maine you exhibited him right along with the film, and lectured on him at the same time? A. Yes, sir. 4

Q. And he came on and did the actual act you saw in the picture? A. Yes, sir.

Q. And in that case it was an actual vaudeville act, because the boy went through the exact vaudeville acts that are indicated on the film?

MR. GROSVENOR: I object to that as an improper statement of counsel for defendants, and implying

- 1            something directly contrary to the fact, and to the testimony given, and therefore, not proper.

By Mr. KINGSLEY :

Q. Isn't it true that the boy went through the same acts that were indicated on the film, or substantially the same acts, I mean? A. Well, not all of them.

Q. Part of them, substantially the same acts? A. He did the lifting, that was the only part which he did.

- 2            Q. But he did act on the stage in connection with these motion pictures which were being shown? A. Merely to identify him with the picture and film.

Q. And at the same time you lectured as lucidly and entertainingly as you knew how? A. Just told the audience this was the boy whose picture was on the film.

Q. What is your business in life? A. I have followed mining a good deal, and also newspaper work.

Q. Were you a reporter, or an editor? A. I have been both.

Q. On daily newspapers? A. Yes, sir.

- 3            Q. Mr. Bates, did you regard this as your business, the exhibiting of this film and boy? A. No, of course not; but I considered it a gold mine, and that the public would like to see, perhaps, such an extraordinary thing.

Q. You never were an exhibitor before, were you? A. No, never.

Q. Are you still in the newspaper business? A. Well, occasionally only. I am more interested, now, in promoting mines, and selling mining stock.

Redirect examination by Mr. GROSVENOR :

- 4            Q. Mr. Bates, I show you the Defendants' Exhibit No. 14, being letter dated October 14, 1911. Please state to whom that letter was sent by you; was it sent to the Motion Picture Patents Company? A. Yes, this was addressed to the Motion Picture Patents Company.

Q. And that was sent by you to that company after you had made repeated and continuous efforts to show your films in the theatres in Boston which were known as licensed theatres? A. Yes, sir.

Q. Now, after reciting in this letter your difficulties in showing these films, you say (reading from paper) : "I am



sure you do not approve of this and write to you a concise statement of the case." Is that the reason you sent the letter to this company? A. That is the reason. 1

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CHARLES W. BOYER, a witness subpœnaed on behalf of the petitioner, being first duly sworn by the Examiner, testified as follows:

Direct examination by Mr. GROSVENOR:

Q. Where do you reside? A. Hagerstown, Maryland. 2

Q. Do you have certain theatres or did you have in the latter part of 1912, in the City of Chambersburg, Pennsylvania? A. I had two theatres, yes, in Chambersburg.

Q. Two moving picture theatres? A. Yes. They were two regular theatres. Not exclusively moving pictures, but played pictures on all my off nights.

Q. What were the names of those theatres? A. One was the New Theatre, the other the Rosedale Theatre.

Q. Were there any other theatres in your town that displayed motion pictures? A. Yes. A third theatre, called the Star Theatre. 3

Q. What projecting machines did you use in your two theatres at that time? A. We used an Edison in the Rosedale, and a Powers in the New Theatre.

Q. And each of those projecting machines were manufactured by the licensed manufacturers, or don't you know anything about that? A. I suppose they were. I am not familiar with that.

Q. I show you a letter dated December 23rd, 1912, and ask you whether that is the letter received by you from the Patents Company about the time stated on the letter (handing paper to witness). A. (witness examining paper) : Yes. 4

Mr. GROSVENOR: I offer it in evidence.

The paper offered is marked Petitioner's Exhibit 182, and is as follows:

1

**Petitioner's Exhibit No. 182.**

**MOTION PICTURE PATENTS COMPANY**

80 Fifth Avenue, New York

December 23rd, 1912.

Mr. C. W. Boyer,  
Rosedale Theatre,  
40 North Main Street,  
Chambersburg, Pa.

2

Dear Sir:—

Re: Rosedale and New Theatres:

We are informed that you operate both the Rosedale and the New Theatres, and we note that you have used licensed service only in one of them.

If you desire to continue as a licensee of this Company it will be necessary for you to use in theatres owned or controlled by you only projecting machines licensed by this Company.

3

Please inform us whether or not you own the two theatres mentioned above, and whether you desire to continue as a licensee of this Company under the terms mentioned.

Very truly yours,

**MOTION PICTURE PATENTS COMPANY.**

By J. B.

JB—DP

4

By Mr. GROSVENOR:

Q. I show you two other letters dated January 11th and January 14th, 1913, respectively, and ask if those are two letters received by you from the Patents Company about the time stated on the letter (handing papers to witness)?  
A. (witness examining papers): Yes.

Mr. GROSVENOR: I offer them in evidence.

The letter of January 11th, 1913, is marked Petitioner's Exhibit No. 183, and is as follows:

**Petitioner's Exhibit No. 183.**

1

MOTION PICTURE PATENTS COMPANY

80 Fifth Avenue, New York

January 11th, 1913.

Rosedale Theatre,  
Chambersburg, Pa.

Gentlemen :

Re: Exhibition of Unlicensed Motion Pictures.

2

We are informed that on January 3rd you exhibited the unlicensed motion pictures of "Homers Odyssey."

We shall be pleased to learn of any reason why your license should not be cancelled.

Yours truly,  
MOTION PICTURE PATENTS COMPANY.  
By J. B.

JB/ACL.

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3

The paper dated January 14th, 1913, is marked Petitioner's Exhibit No. 184, and is as follows :

**Petitioner's Exhibit No. 184.**

MOTION PICTURE PATENTS COMPANY

80 Fifth Avenue, New York

January 14th, 1913.

Rosedale Theatre,  
Chambersburg,  
Pennsylvania.

4

Gentlemen :

Re: Exhibition of Unlicensed Motion Pictures.

We are informed that on Saturday, January 11th, you



- 1 exhibited the unlicensed motion pictures of "Pilgrim's Progress." We shall be pleased to have your explanation.

Yours truly,  
MOTION PICTURE PATENTS COMPANY.  
By J. B.

JB/ACL.

---

By Mr. GROSVENOR:

- 2 Q. I also show you another letter, dated January 22nd, 1913. Is that another letter received by you from the Patents Company (handing paper to witness)? A. (witness examining paper): Yes, sir.

Mr. GROSVENOR: I offer it in evidence.  
The paper offered is marked Petitioner's Exhibit No. 185 and is as follows:

**Petitioner's Exhibit No. 185.**

- 3 MOTION PICTURE PATENTS COMPANY  
80 Fifth Avenue, New York

January 22nd, 1913.

Mr. Charles W. Boyer,  
Academy of Music,  
Hagerstown, Md.

Dear Sir:

Re: Rosedale Theatre, Chambersburg, Pa.

- 4 Replying to your letter of January 14th, relating to the Rosedale Theatre of Chambersburg, Pa.

Unless you can arrange to use only motion pictures licensed by this Company in your Rosedale Theatre at Chambersburg, it will be necessary for us to cancel your license. Please inform us at your earliest convenience whether or not you will be able to make these arrangements.

Yours truly,  
MOTION PICTURE PATENTS COMPANY.  
By J. B.

JB/ACL.

Cross examination by Mr. KINGSLEY: 1

Q. I show you a letter dated January 24th, 1913, and ask you if it is your letter and contains your business stamp at the bottom (handing paper to witness)? A. (witness examining paper) : Yes, sir, that is my letter and my stamp.

Mr. KINGSLEY: I offer it in evidence.

The paper offered is marked Defendants' Exhibit No. 17, and is as follows:

**Defendants' Exhibit No. 17.** 2

THE BOYER THEATRES

Under Personal Direction of Chas W. Boyer,

Hagerstown, Md.

(Other theatres listed.)

Hagerstown, Maryland, 1/24/13.

Motion Picture Patents Co.,  
80 Fifth Ave.,  
New York City.

3

Gentlemen:

Replying to yours of Jan. 22d, beg to advise that now that I know where I stand, will in the future only use motion pictures licensed by your Company, in the Rosedale Theatre, Chambersburg.

Yours very truly,

CHAS W. BOYER.

This letter from Hagerstown, Md., where any reply should be sent. 4

Rubber stamp

Received

1913 Jan 25 AM 10 16

Ans J. B. D. P. 1/28/13

1    By Mr. KINGSLEY:

Q. I show you a letter dated January 14th 1913, and ask you if that is your letter and your signature (handing paper to witness)? A. (witness examining paper) : Yes, sir.

Mr. KINGSLEY : I offer it in evidence.

The paper offered is marked Defendants' Exhibit No. 18, and is as follows:

**Defendants' Exhibit No. 18.**

2

**EASTERN THEATRE MANAGERS ASSOCIATION**

Secretary's Office

Chas. W. Boyer, Secretary

Academy of Music—Hagerstown, Md.

(Officers and Directors listed.)

1/14/13

Motion Picture Patents Company,

80 Fifth Ave.,

3      New York City.

Gentlemen:

Replying to yours of Jan. 11th addressed to the Rose-dale Theatre, Chambersburg, Pa., beg to advise you that on Jan. 3d, we played Homer's Odyssey as a regular road attraction on percentage, just the same as we play Lyman H. Howe.

4      You will remember, of course, that the Rosedale Theatre is a regular House playing road attractions, stock, minstrels, musical comedies, etc., and showing pictures only on the off nights when there is nothing else, and we endeavor at all times to keep within the rules and regulations of the Patents Company.

The writer saw these pictures in Baltimore, some weeks ago, and booked them for Chambersburg, as stated before, on percentage, and I fail to see any reason why that should



violate any rules of the Patents Company, which if they have been violated, was entirely unintentional. 1

Yours very truly,

Chas. W. Boyer.

File, J. B.

Rubber stamp

Received

1913 Jan 15 AM 11 35

Ans 1/22/13 J/A. C. L.

2

By Mr. KINGSLEY :

Q. I show you a letter dated January 20th, 1913, and ask you if that is your letter and your signature (handing paper to witness)? A. (witness examining paper) : Yes, sir.

Mr. KINGSLEY : I offer it in evidence.

The paper offered is marked Defendants' Exhibit No. 19, and is as follows :

**Defendants' Exhibit No. 19.**

3

**EASTERN THEATRE MANAGERS ASSOCIATION**

Secretary's Office

Chas. W. Boyer, Secretary

Academy of Music—Hagerstown, Md.

(Officers and Directors listed.)

1/20/13

Motion Picture Patents Company,

80 Fifth Ave.,

New York City.

4

Gentlemen :

Replying to your letter of the 14th, addressed to the Rose-dale Theatre, Chambersburg, which has just reached me owing to my absence from the City, beg to advise you that on Sat. Jan. 11th at Chambersburg we played an attraction on percentage known as the ROBB AND BOBERTSON'S JOLLIETS, and they furnished as part of their entertainment motion pictures of PILGRIMS PROGRESS.

1 I should like to be set clear as to these pictures, whether we have or have not the right to play them when furnished by a Company playing the House on percentage.

An early reply will greatly oblige,  
Yours very truly,

Chas. W. Boyer.

Rubber stamp

Received

1913 Jan 21 AM 11 20

Ans 1/22/13 J. B.

File, J. B.

2

By Mr. KINGSLEY:

Q. What do you refer to in your letter there when you say "Beg to advise you that on January 3rd we played Homer's Odyssey as a regular attraction on percentage, just the same as we play Lyman H. Howe?" A. Well, in the theatres that I run, we do not run pictures exclusively. The theatre in Hagerstown and the theatres in Chambersburg we play road shows, one-night attractions, for instance, like min-trels or dramatic shows, repertoire shows, and among the one-  
3 night attractions that we play every season, we play Lyman H. Howe twice. Howe has made a great success in the moving picture business, that is, by his program, travels, and so forth, and he is a big favorite, and his name is coupled with his pictures, and is a big drawing card for us. And when I mentioned that we played Homer's Odyssey as a road attraction, I meant just the same as we play any other road attraction. We play them on percentage.

Q. You are referring to the percentage basis? A. Yes. This show was booked from New York, and we played it on  
4 percentage.

Q. So that a large number of shows that come to your place, you play on percentage? A. When the shows come, we lay off the pictures, but we pay for them just the same.

Q. What kind of projecting machines did you say you were using at the two theatres? A. At the Rosedale, an Edison. At the New Theatre, a Powers No. 6.

Q. You had an exhibitor's license, didn't you? A. Well, I have never seen one.

Q. You never saw one? A. No, I am supposed to be paying a license to my exchange.

Q. Where is your exchange? A. Wilkes-Barre.

1

Q. Who was the owner of it? A. The General Film Company. The Wilkes-Barre, Pennsylvania, branch.

Whereupon, at 4.15 P. M. on this 8th day of July, 1913, the hearing is adjourned until 10:30 A. M., July 9th, 1913, at Room 47, Post Office Building, New York City.

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IN THE  
DISTRICT COURT OF THE UNITED STATES  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

2

<p style="text-align: center;">UNITED STATES OF AMERICA, Petitioner,</p> <p style="text-align: center;">v.</p> <p style="text-align: center;">MOTION PICTURE PATENTS Co., and others, Defendants.</p>	}	<p>No. 889.</p> <p>Sept. Sess., 1912.</p>
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3

New York, July 9th, 1913.

The hearing was resumed pursuant to adjournment, at 10:30 o'clock A. M., on this July 9th, 1913, at Room 47, Post Office Building.

Present on behalf of the Petitioner, Hon. EDWIN P. GROSVENOR, Special Assistant to the Attorney General.

JOSEPH R. DARLING, Esq., Special Agent.

Present also, Messrs. CHARLES F. KINGSLEY, GEORGE R. WILLIS and FRED R. WILLIAMS, appearing for Motion Picture Patents Company, Biograph Company, Jeremiah J. Kennedy, Harry N. Marvin and Armat Moving Picture Company.

4

Mr. J. H. CALDWELL, appearing for William Pelzer, General Film Company, Thomas A. Edison, Inc., Kalem Company, Inc., Melies Manufacturing Company, Pathe Freres, Frank L. Dyer, Samuel Long, J. A. Berst and Gaston Melies.



- 1           Mr. HENRY MELVILLE, attorney for George Kleine, Essanay Film Manufacturing Company, Selig Polyscope, George K. Spoor and W. N. Selig.  
          Mr. JAMES J. ALLEN, appearing for Vitagraph Company of America, and Albert E. Smith.

Thereupon, A. J. CLAPHAM, a witness subpœnaed on behalf of petitioner, of lawful age, duly sworn, deposes as follows:

- 2           Direct examination by Mr. GROSVENOR:

          Q. Mr. Clapham, in the early part of 1910 where were you doing business? A. San Francisco.

          Q. San Francisco? A. Yes, sir.

          Q. In what business were you engaged? A. Moving picture rental and supply business.

          Q. What was the name of the company with which you were connected? A. Theatre Film Service Company.

          Q. Were you one of the owners of that company? A. Yes, sir.

- 3           Q. Were you the principal owner of the stock and manager of the Theatre Film Service Company in January and February, 1910? A. Yes.

          Q. You may state whether or not that was one of the so-called licensed rental exchanges, that is, whether it had a license, so-called, from the Motion Picture Patents Company? A. It did, yes.

          Q. How long had the Theatre Film Service Company had a license from the Motion Picture Patents Company? A. I believe from the inception of the Patents Company.

- 4           Q. Please name the different manufacturers of films from whom you had been obtaining films just prior to January and February, 1910? A. I was buying from all of the licensed manufacturers.

          Q. That is, Lubin, and Selig, and Edison? A. Yes, sir.

          Q. And Essanay, Kleine, Biograph, etc.? A. Yes, sir.

          Q. And were the films shipped to your rental exchange, that is, to the office of the Theatre Film Service Company, from the several factories of these manufacturers you have named? A. Yes, sir.

          Q. About what amount of business were you doing each week in films? A. My rental business averaged about six-

teen hundred dollars a week at the time my license was cancelled.

Q. That is to say, that was the gross amount of your business? A. Yes, sir; the gross receipts.

Q. Now, please state what occurred in connection with the supplying of films in February, 1910? A. Well, about February 10th, or 12th, I believe, the films stopped coming in.

Q. And how had you been receiving films theretofore? A. I had been getting them right along, every morning. They stopped coming in, and I went over to the express company to find out if there were any there, and the agent of the express company told me he had several wires from the manufacturers authorizing or directing him not to deliver these films to me, but to return them at once; and I then wired to the different manufacturers, and could not get any answer, and I also wired the Patents Company, and couldn't get any answer, and then I got on the train and started for New York, and while going through New Mexico my office in San Francisco remailed a letter they received a couple of days after I left home, stating that my license was cancelled. The letter was dated February 8th, but was not received in San Francisco until about the 10th or 12th, or, probably a little later than that, and I came on East to New York to try to find out what the trouble was. I couldn't get any satisfaction.

Q. Where did you go when you came to New York? A. Down to 80 Fifth Avenue, the office of the Motion Picture Patents Company. I stopped off, though, first, in Chicago, and saw Mr. Spoor and Mr. Selig, and they would not give me any satisfaction, and they told me to come on to New York and see the Patents Company.

Q. Whom did you see at 80 Fifth Avenue, if anyone, in connection with this matter? A. I hung around here about two days, and then I finally saw Mr. Scull, and Mr. Marvin, at the office, and I believe that Mr. Kennedy was present also.

Q. State whether or not any reason was assigned for the cancellation of your license? A. Well, they didn't give me any reason whatever down there. They brought up one or two matters down there that I did not think had any bearing on the subject whatever.

Q. Please state whether or not you had paid for the films which you had theretofore received? A. Well, up to the time that my films had been stopped I didn't owe them anything. I used to pay my bills on Monday of every week fol-

1   lowing the receipt of the films, but on the day the films stopped coming in I got in touch with my attorneys, who advised me to stop payment of all checks outstanding to the Patents Company and the manufacturers, pending some information as to why the license was cancelled.

Q. Had you paid your bills promptly at the time or up to the date when the films stopped coming? A. Yes, sir.

Q. Now, what effect, if any, did this cancellation of your license have upon your business in San Francisco? A. Practically ruined the business, because my customers kept dropping off, one after another, when I could not give them films.

2   Q. Did you afterwards come to New York? A. I came to New York in August of 1911.

Q. You may state whether or not replevin suits were instituted against you in connection with these films which you had previously obtained from the licensed manufacturers, that is, films which you had rented during the period of your license? A. Why, one time I had a box of about forty-five or fifty films brought here by the American-Hawaiian Steamship Company to save expressage, and there was another concern by the name of the International Film Company—

3   Q. (interrupting): You need not go into all of those details, but please state whether any replevin actions were instituted against any films which you had and which you had obtained from any of the licensed manufacturers during the period of your license? A. Not during the period of my license.

Q. Were the films obtained during the period of your license? A. Yes, sir.

Q. And the replevin actions were instituted afterwards? A. Yes, sir.

Q. And in New York? A. Yes, sir.

4   Q. Now, you may state what attorney, if any, connected with the Motion Picture Patents Company, had charge of the suits or directed them? A. Mr. Durant Church.

Q. How many of those suits were there in New York? A. I know of only one suit, in which they seized about forty-five reels belonging to me.

Mr. KINGSLEY: I object to the statement of the witness that the reels belonged to him, as being a characterization which is entirely improper, because



he has stated that he obtained the reels under the license. 1

The Witness: Many of these reels seized were older than the history of the Patents Company, and made years before the Patents Company was thought of.

By Mr. GROSVENOR:

Q. Films, some of which you had purchased outright?

A. Yes, sir.

Q. Mr. Clapham, did you meet Mr. Church, in connection with these replevin suits brought against you? A. I didn't meet Mr. Church while they were being replevied, but later, on several occasions, I met him. 2

Q. At what times, that is, at courts or trials? A. I believe it was while returning from the court, once or twice.

Q. And what, if anything, did Mr. Church say about the purpose of bringing these suits, or these replevin suits, or the object of bringing the replevin suits in general by the Patents Company?

Mr. KINGSLEY: Objected to as incompetent, immaterial, irrelevant and not binding upon the defendants, and also on the ground that it does not appear that the Motion Picture Patents Company brought any suit against this witness. 3

By Mr. GROSVENOR:

Q. These suits were brought by these several so-called licensed manufacturers? A. Yes, sir; they were seized on blanket replevins—they didn't know what they were going after when they went after these films. 4

Mr. KINGSLEY: I object to the statement of the witness, as being a conclusion.

The Witness: They looked over the films that they took, and filled in the names of the films there in the office as they took them.

1 By Mr. GROSVENOR:

Q. Now what, if anything, did Mr. Church say at any time that you had a conversation with him in relation to the bringing of the replevin suits by the licensed manufacturers or by the Motion Picture Patents Company?

Mr. KINGSLEY: Objected to as incompetent, irrelevant, immaterial and hearsay, and not binding upon the defendants.

2 The Witness: Well, the gist of his conversation was that these things were being brought mostly to scare the people engaged in the business around through the country.

Mr. CALDWELL: I object to the witness summarizing in that way.

By Mr. GROSVENOR:

Q. You mean by the "gist" of it, your recollection of what was said in the conversation, by him? A. Yes, sir.

3 Q. Now, please continue. What else?

Mr. KINGSLEY: I object to the witness stating the conversation in substance, or attempting to give the gist of it.

By Mr. GROSVENOR:

4 Q. Give it, to the best of your recollection. A. I recollect one particular remark that he made and that was that the Motion Picture Patents Company figured that they won out even if they lost a suit, on account of the publicity that they got through the suit, that the bringing of the suit was heralded broadcast, but that the termination of them—that they never knew what happened.

Q. Was anything said about sending out notices to the trade papers whenever a suit was brought?

Mr. KINGSLEY: I object to the question as leading, and suggestive, and in effect stating to the witness what he is expected to testify to.

The Witness: It is not entirely clear to me what conversation may have taken place relative to the notices sent out to trade papers. 1

By Mr. GROSVENOR:

Q. You don't know whether or not he said anything on that subject? A. No, sir.

Q. State whether or not Mr. Church said anything about the source of the funds which were being used to bring these suits.

Mr. KINGSLEY: Objected to as incompetent, immaterial and irrelevant, and not binding upon the defendants, and not within the issues. 2

The Witness: I believe I remarked about it costing them an awful lot of money to keep this litigation up, and the remark was made by him that the exhibitors were paying for it.

By Mr. GROSVENOR:

Q. Now, this Mr. Church was Mr. Durant Church, who was present in the court room yesterday? A. Yes, sir. 3

Q. At these hearings? A. Yes, sir.

Q. And sitting alongside of the defendants' counsel here? A. Yes, sir; I know the gentleman very well.

Cross examination by Mr. KINGSLEY:

Q. Were you ever a defendant in any suit instituted by any licensed manufacturer? A. Individually?

Q. Yes. A. Not that I have any recollection of.

Q. So these suits which you have just testified about, were not brought against you? A. Not individually. 4

Mr. GROSVENOR: They were brought against your company?

The Witness: The company that I was the owner of.



1 By Mr. KINGSLEY :

Q. Were you joined as a co-defendant in those suits? A. I do not recollect, it has been so long now.

Q. Was one of these suits to which you have referred, but in which you were not a defendant, or not made a co-defendant, tried to a finish? A. You mean a replevin suit?

Q. Yes. A. Why, I believe there was.

Q. I am speaking of one of them—was one of them concluded in court? A. Well, we won the two last.

2 Q. Now, you haven't answered my question. I am asking you if one of these suits, regarding which you have testified, was brought by the Biograph Company? A. Yes, sir.

Q. And was that case tried to a finish? A. To the best of my recollection, it was.

Q. And it was won by the Biograph Company? A. To the best of my recollection, it was won by me, either the Biograph or the Vitagraph case—I know of three cases, and I won two, and only one lost, and I think it was the Vitagraph.

Q. You lost one? A. Yes, sir, but I didn't appeal it.

Q. Was the Biograph case appealed? A. If I understand it right, the Biograph Company did appeal their case.

3 Q. And didn't the Biograph Company win that case on appeal? A. I have never heard as to the termination of the case, I have lost interest in them.

Q. And although you have been testifying regarding this case, you don't know whether it was finished or not? A. I have no recollection of the Biograph appeal ever being settled as yet.

Q. Did you ever advertise any films for sale that you received from the licensees? A. I have been doing nothing but buying and selling films ever since I have been in New York City.

4 Q. Did you ever advertise any licensed films for sale? A. No, sir; never advertised licensed films for sale, but I have advertised films for sale.

Q. When you say that you "advertised films for sale" do you mean by that you advertised all kinds of films for sale? A. All kinds of films.

MR. GROSVENOR: Are you referring now to his business in New York after he arrived here, or are you re-

ferring to the business that he conducted in San Francisco? 1

Mr. KINGSLEY: I am asking him generally, as you did; you have brought him to New York, and have gone into his subsequent career in New York.

By Mr. KINGSLEY:

Q. What was the name of this company that you referred to, the International Film Company, or the International Film Traders Company? A. The company I made reference to was the International Film Traders. 2

Q. And your testimony was in regard to the International Film Traders? A. Yes, sir.

Q. Is that the complete name of the concern? A. As far as I know, it is the International Film Traders.

Q. Did the International Film Traders offer film for sale? A. I don't know anything about what they did. You know as much as I do about that, I guess.

Q. I am asking you if they did offer film for sale? A. I don't know.

Q. Were you connected with this concern? A. No, sir.

Mr. GROSVENOR: I object to that as immaterial. I have not asked the witness any questions about the International Film Traders. 3

By Mr. KINGSLEY:

Q. In whose possession were the films at the time of the seizure under the replevin suit? A. They were not in the possession of the International Film Traders, although they were in their premises in a box addressed to me.

Q. Now, isn't it true, as a matter of fact, that these films to which you have just referred were distributed all through the stock in the premises of the International Film Company? A. Not my films. 4

Q. Or in the premises of the International Film Traders? A. Not my films.

Q. I think you stated that at the time these replevin suits were begun a number of films were seized which belonged to you? A. I should judge, about forty-four of them.

Q. What were the titles of those films, or some of them? A. I could not recollect. All the papers in connection with them are in the hands of my attorney.

- 1 Q. Who is your attorney? A. Mr. Louis J. Rosett.  
Q. And where is he located? A. 29 Liberty Street. I believe he is off on a vacation right now.  
Q. What was the name of your company in San Francisco? A. Theatre Film Service Company, Incorporated.  
Q. Were you interested in the Western Amusement Company? A. Yes, sir.  
Q. What interest did you have in the Western Amusement Company? A. That was the Western Amusement Supply Company.
- 2 Q. At what place did the Theatre Film Service Company do business in San Francisco? A. In the premises occupied by the Western Amusement Supply Company.  
Q. So that the Western Amusement Supply Company was the landlord, and the Theatre Film Service Company was the tenant? A. Yes, sir.  
Q. And they both did business in the same premises? A. Yes, sir; in a three-story building.  
Q. You were the principal owner of the Theatre Film Service Company, were you not? A. Yes, sir.  
Q. And you were also the principal owner of the Western Amusement Supply Company? A. Yes, sir.
- 3 Q. And the two did business in the same premises? A. Yes, sir.  
Q. Was the Theatre Film Service Company a licensee of the Patents Company? A. Yes, sir.  
Q. Was the Western Amusement Supply Company a licensee of the Motion Picture Patents Company? A. No, sir.
- 4 Q. I show you a bill dated October 15, 1909, on the billhead of the Western Amusement Supply Company, Incorporated, 1038 Golden Gate Avenue, San Francisco, made out to W. Lobger, Haywards, California, and ask you if that is a bill made out by the Western Amusement Supply Company to its customer whose name I have given you (handing paper to witness)? A. (witness examining paper): That is one of my old bills.  
Q. This bill is on three sheets, and the grand total is \$150.70. Is it the one bill? A. I believe it is all one bill.

Mr. KINGSLEY: I offer it in evidence.

Mr. GROSVENOR: I object to them all as wholly immaterial.



The papers identified by the witness, comprising  
three sheets, are marked Defendant's Exhibit 20-a,  
20-b and 20-c. 1

**Defendants' Exhibit No. 20a.**

Telephone West 2600

WESTERN AMUSEMENT SUPPLY CO., INC.,

Moving Picture Machines  
Films, Slides and Supplies

1038 Golden Gate Ave.

San Francisco, Cal. 2

Ship to W. Lobger  
Haywards,  
Cal.

(Cut of Projecting Machine.)

Date Billed, 10/15/09.  
O. K. (Signature illegible.)

Order No. 3741

Ship by

3 Fainey slides	\$1.50	3
1 Universal machine	75.00	
1 Case	5.00	
1 Curtain	5.00	
1 slide box	1.00	
carbons	2.00	
2 sets of lectures	6.00	
2 condensers	1.70	
Tickets	1.00	
2 Bottles cement	.50	
1 oil	.15	4
1 oil can	.10	
Ink and gelatine and pen	1.00	
1 Carbon pliers	.50	
6 slides	3.25	

---

\$103.70

(Rubber stamp of company.)

Paid Oct. 15/1909.

No. 3741

1

**Defendants' Exhibit No. 20b.**

Telephone West 2600

WESTERN AMUSEMENT SUPPLY CO., INC.,

Moving Picture Machines

Films, Slides and Supplies

1038 Golden Gate Ave.

San Francisco, Cal.

Ship to W. Lobger

2

Haywards,

(Cut of Projecting Machine.)

Date Billed, 10/15/09.

Order No. 3742

Ship by

2 Reel of Films 40.00

#1254—1516

Bill No. 3741 103.70

Margin

3

---

143.70

1% By cash 5.00

---

138.70

(Rubber stamp of company.)

Paid Oct. 15/1909.

No. 3742

4

**Defendants' Exhibit No. 20c.**

1

Telephone West 2609

WESTERN AMUSEMENT SUPPLY CO., INC.,

Moving Picture Machines

Films, Slides and Supplies

1038 Golden Gate Ave.

San Francisco, Cal.

Ship to W. Lobeger

Haywards.

2

(Cut of Projecting Machine.)

O. K. (Signature illegible.)

Order No.

Ship by

Received

3.00

Assorted posters

4.00

138.70

---

145.70

5.00

---

150.70

3

By Mr. KINGSLEY:

Q. I show you that portion of the bill which you have just identified, marked Defendant's Exhibit 20-b, and ask you if it contains an item regarding two reels of film (handing paper to witness)? A. (witness examining paper): That is what it looks like to me.

4

Q. Well, does it? A. That is what it says there.

Mr. GROSVENOR: It speaks for itself.

By Mr. KINGSLEY:

Q. Two reels of film at \$40? A. That is what it says there.



1 Q. Did you receive on or about July 5, 1910, a letter from the Motion Picture Patents Company of New York, copy of which I now show you (handing paper to witness)? A. (witness examining paper): I may have received that letter. It is so long back, my recollection is not very clear.

Q. Have you produced any letter recently which you have received at that time from the Motion Picture Patents Company? A. Have I produced any letter?

2 Q. Yes. For the Government or anyone else? A. Well, I have not seen anything like that for the last three or four years. I don't know whether I turned a letter like that over to the Government or not.

Mr. KINGSLEY: I offer it in evidence.

The paper offered is marked Defendants' Exhibit No. 21, and is as follows:

**Defendants' Exhibit No. 21.**

(Copy.)

3

January 5th, 1910.

Mr. A. J. Clapham,  
Theatre Film Service Co.,  
76 2nd Street,  
San Francisco, Cal.

Dear Sir:

4 We have reason to believe that either the Theatre Film Service Company or the Western Amusement Supply Company, which we understand are each controlled by you and operated from the same office, is selling film outright. If this has been done by either concern, we would be pleased to have you report to us at once under what circumstances this was done, and what reasons you have to give therefor.

Yours truly,  
MOTION PICTURE PATENTS COMPANY

GFS/JK  
X-102

By

By Mr. KINGSLEY:

1

Q. I show you a copy of a letter on the letterhead of the Theatre Film Service Company, dated January 11th, 1910, addressed to the Motion Picture Patents Company at 80 Fifth Avenue, New York, and ask you if the signature is yours, or the signature of your representative (handing paper to witness)? A. (witness examining paper): That is my signature, I believe.

Mr. KINGSLEY: I offer it in evidence.

The paper identified by the witness is marked  
Defendants' Exhibit No. 22.

2

**Defendants' Exhibit No. 22.**

THEATRE FILM SERVICE CO.

(Incorporated)

76 and 78 Second Street

(Rest of letterhead omitted.)

San Francisco, 1/11/10.

3

Motion Picture Patents Co.,  
80 Fifth Ave.,  
New York City.

Gentlemen:

We beg to advise receipt of your letter of January 5th in which you advise us that either the Theatre Film Service Co. or the Western Amusement Supply Co. have been selling film outright and we would like to state that the Theatre Film Service Co. has never sold one foot of film since the formation of the Motion Picture Patents Co. and we have been rigidly adhering to all of the agreements signed in our license contract and in no instance have we violated any of the conditions therein.

4

For your information, however, I would state that the Western Amusement Supply Co., a separate corporation, but controlled by the same parties, has been selling such films as listed in their catalogue, a copy of which we are sending you under separate cover. This film is furnished us by the Enterprise Optical Manufacturing Co. of Chicago, and all

1 of the film thus listed in this catalogue, if I remember rightly, is that film which was made several years ago, and I am unable to advise you who the different manufacturers are, but I do know that the Biograph, Edison, Lubin and Selig Companies are represented therein.

2 We are placed in exactly the same position as the Amusement Supply Co. of Chicago, inasmuch as the Amusement Supply Co. was, up until a few weeks ago, controlled by Mr. F. C. Aiken, Mr. Hutchinson, and A. C. Roebuck. They use the same identical catalogue which we use and I presume you will remember that the above gentlemen were associated in the Theatre Film Service Co. of Chicago.

There has been no film which the Theatre Film Service Co. has leased from the various manufacturers, sold under any conditions whatever. It has been rented to Theatres only and the film that was sold by the Western Amusement Supply Co. were, in almost every instance, shipped direct from the Enterprise Optical Mfg. Co. to our customers.

3 Although the Theatre Film Service Co. and the Western Amusement Supply Co. share the same building, they are two separate corporations and have two separate sets of employees and are as distinct and separate as if they were located in different cities.

The same grade of film that the Western Amusement Supply Co. has been selling through their catalogue, has been sold, and, I believe, still is being sold, by Mr. George Breck of this city, such subjects being of the old stock and, I believe, running below 200 feet.

4 I can give you an accurate record of every foot of film leased of the various manufacturers since the formation of the Motion Picture Patents Co. and I am willing to furnish you an affidavit that there has been no film sold in any event by the Theatre Film Service Co. of San Francisco.

I would like to hear from you regarding the terms under which the Western Amusement Supply Co. sells film, for while they are not in any way connected with the Motion Picture Patents Company, I grant that the two concerns are so closely identified that it becomes necessary that the Western Amusement Supply Co. does not violate any of the conditions as imposed upon the Theatre Film Service Co., but at the time the Motion Picture Patents Co. was formed we took the matter up with the Enterprise Optical Mfg. Co., from whom we purchased nearly all of our goods and from whom



we get our catalogues, and they advised us that the manufacturers signified their willingness to keep on selling the short subjects for mail order purposes. 1

If there has been any violation of the Patents Company's conditions, it has been without any knowledge on my part, and the facts that the licensed manufacturers have been selling this film to us through the Enterprise Optical Manufacturing Co. has been sufficient guarantee to us that everything was strictly proper.

I would like, however, to correct any impression that might have been formed that the Theatre Film Service Co. has ever sold any film, as they are strictly renters of film and there has never been a foot of film leased by them from the manufacturers that has been sold. 2

If there is any further information that I can furnish, I will be glad to do so.

Yours truly,  
THEATRE FILM SERVICE CO.,  
A. J. Clapham.

AJS-S

Stamped: Received Jan. 17, 1910. Ansd. 2/4/10—S. 3

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By Mr. KINGSLEY:

Q. I show you a copy of a letter, dated February 4th, 1910, addressed to Mr. A. J. Clapham, Theatre Film Service Company, 76 Second Street, San Francisco, California, signed by the Motion Picture Patents Company, and ask you if you received the original of it (handing paper to witness)? A. (witness examining paper): I presume that I received the original. 4

Mr. KINGSLEY: I offer it in evidence.

The paper identified by the witness is marked Defendants' Exhibit No. 23, and is as follows:

1

**Defendants' Exhibit No. 23.**

(Copy.)

Feb. 4th, 1910.

Mr. A. J. Clapham,  
Theatre Film Service Co.,  
76-2nd St., San Francisco, Cal.

Dear Sir:

2

We regret very much that by reason of your failure to attend the Film Service Convention we were unable to take up with you personally the matter of the sale of the film referred to in some of our past correspondence.

3

Your letter of January 11th was duly received. The statements therein relate entirely to short-length new film, which was not the kind of film referred to in ours of January 5th. Our information is very definite on the point that the Amusement Supply Company has sold outright some film in full reels, some of which was released before the Patents Company began business. Under the Exchange License Agreement, however, all film in the possession of any exchange to which a license was granted became subject to the conditions of that License Agreement, and the Theatre Film Service Co. has no right, therefore, to sell any such film outright, either directly or through the Western Amusement Supply Company.

We might state, in passing, that even such film as you obtained from the Enterprise Optical Manufacturing Company may be sold only to *bona fide* travelling exhibitors.

We particularly wish to know under what circumstances you sold the reel of old film containing

4

"Hypnotist's Joke"

"A Man of Straw" and

"A Canadian Car Ride"

and also whether or not you have sold any other film under the same or other circumstances.

This matter has now been hanging fire for a long period, and we suggest that you give this matter your promptest attention.

Yours very truly,  
MOTION PICTURE PATENTS COMPANY,  
By

GFS/JK

By Mr. KINGSLEY:

Q. I show you a letter dated January 12th, 1910, on the letterhead of the Theatre Film Service Company, 76 and 78 Second Street, San Francisco, and ask you if the signature is yours (handing paper to witness)? A. (witness examining paper): Yes, that is my signature.

Mr. KINGSLEY: I offer that in evidence.

The paper identified by the witness is marked Defendants' Exhibit No. 24, and is as follows:

**Defendants' Exhibit No. 24.**

THEATRE FILM SERVICE CO.

(Incorporated)

76 and 78 Second Street.

(Part of letterhead omitted.)

San Francisco, 1/12/10.

Motion Picture Patents Company,  
80 Fifth Ave.,  
New York, N. Y.

Gentlemen:—

Please be advised that the writer will attend the Film Service Convention in New York—January 28th.

In regards to the recent controversy, relative to the sale of film, would be pleased to take the matter up personally and furnish you any information that you might need

Yours truly,

THEATRE FILM SERVICE COMPANY,

Per A. J. Clapham.

AJC/MH.

(Rubber stamp: Received Jan. 18, 1910. Ansd. 22/4/10.  
G. F. S.



1 By Mr. KINGSLEY:

Q. I show you a letter dated January 24th, 1910, on the letterhead of the Theatre Film Service Company, 76 and 78 Second Street, San Francisco, and I ask you if the signature is yours (handing paper to witness)? A. (witness examining paper): Yes, sir.

Mr. KINGSLEY: I offer it in evidence.

The paper identified by the witness is marked Defendants' Exhibit No. 25, and is as follows:

2 **Defendants' Exhibit No. 25.**

THEATRE FILM SERVICE CO.

(Incorporated)

76 and 78 Second Street.

San Francisco, 1/24/10.

(Part of letterhead omitted.)

Motion Picture Patents Co.,

80 Fifth Ave.,

3 New York.

Gentlemen:—

I regret, that at the last moment I am unable to make the trip to New York during the Film Service Convention, several matters requiring my personal attention having come up during the last few days, making it impossible for me to do so.

Yours truly,

4 THEATRE FILM SERVICE COMPANY,  
Per A. J. Clapham.

AJC/MH.

Rubber stamp: Received Feb. 1, 1910. Ansd. None—S.

---

By Mr. KINGSLEY:

Q. Do you remember the date of the letter notifying

you that your license had been cancelled? A. To my best 1  
recollection, it was February the 8th.

Q. 1910? A. 1910.

Q. Is this a copy of it (handing paper to witness)?

A. (witness examining paper): It looks like it.

Mr. KINGSLEY: I offer it in evidence.

The paper offered is marked Defendants' Exhibit  
No. 26, and is as follows:

**Defendants' Exhibit No. 26.**

2

(Copy.)

February 8, 1910.

Theatre Film Service Company,  
76 Second Street,  
San Francisco, Cal.

Gentlemen:—

This is to notify you that your exchange license agree-  
ment with this Company has been cancelled.

3

Yours very truly,  
MOTION PICTURE PATENTS CO.

By

GFS/ARK.

Mr. GROSVENOR: May I interrupt with a question?  
Who is the "G. F. S." who signed his initials on  
those several letters, do you know?

The Witness: In the Patents Company?

4

Mr. GROSVENOR: Yes.

The Witness: G. F. S.? I don't know, unless it is Mr.  
Scull.

By Mr. KINGSLEY:

Q. I show you a letter dated February 11th, 1910, on

- 1 the letterhead of the Theatre Film Service Company, 76 and 78 Second Street, San Francisco, California, and ask you if your signature is appended at the end (handing paper to witness)? A. (witness examining paper): Yes, sir.

Q. You dictated this letter, did you not? A. I don't know. It does not show the dictation marks on it.

Q. At any rate, you signed it? A. I believe I signed the letter. It looks like my signature.

Mr. KINGSLEY: I offer it in evidence.

The paper offered is marked Defendants' Exhibit No. 27, and is as follows:

2

**Defendants' Exhibit No. 27.**

THEATRE FILM SERVICE CO.

(Incorporated)

76 and 78 Second Street.

(Part of letterhead omitted.)

San Francisco, Feb. 11, 1910.

- 3 The Motion Picture Patents Co.,  
80 Fifth Ave.,  
New York City, N. Y.

Attention of G. F. S.

I am in receipt of your letter of the 4th instant and regret to state that although I had made preparations to attend the film service convention, even to the extent of wiring the Hotel Imperial for hotel accommodations, conditions prevented my making this trip.

4

I would like at this time to make such explanations to you as may enable you to handle matters of a similar kind in the future. In the first place, I have been unfortunate during the past year in the matter of employing certain men, who took advantage of the fact that certain competitors here were anxious to make things as warm as possible for me, and they having been discharged from my employ for good reasons, promptly seized the opportunity for making as much trouble as possible. The many complaints regarding this office during the past year can be traced to



the work of these two men. Their efforts at blackmailing me were unsuccessful. In addition to the difficulties that I had with these two employes, I have been in the midst of a nasty divorce suit during the past four months, and I assure you that I have my hands full of trouble.

In regard to the film matter referred to in your letter, I would state that on the 15th day of October, the Western Amusement Supply Company made a sale of a traveling outfit including an Edison Universal Machine to W. Lobger, Haywards, California, he representing to us that he desired to travel in the interior towns, giving one exhibition each week. The Theatre Film Service Company leased him two reels of film, #1,254, "The Mountain Feud," by Selig, and #1516, containing the subjects enumerated in your letter, this being an old reel prior to the formation of the Patents Company. These reels were leased to this party for one month at a price of \$40.00. We are enclosing you herewith a copy of the duplicate bill on file in our office. This party made a trip to Point Arena, which is the last place we heard from him. We have been endeavoring for the past three months to obtain a return of these reels, but have been unable to locate this party. We handled this customer in the same manner in which we would handle a licensed customer, excepting that in view of his representations to us that he would give but one exhibition per week, he was handled on our special exchange license.

I might further state that through the carelessness of a former employe, discharged about one week after this transaction took place, a bill, including the film, was made on the billhead of the Western Amusement Supply Company, but as all bills are O. K'd by our book-keeper before leaving the house, he was also rendered a bill of the Theatre Film Service Company covering these films. I am unable to ascertain at this time what became of the original Western Amusement Supply Company's bill, but I can furnish you with an affidavit of our book-keeper to the effect that this man received a Theatre Film Service Company bill, on which was plainly marked that these reels were leased for the period of one month. As to the veracity of this book-keeper, I would be pleased to refer you to Peter Bacigalupi & Son, representing the Edison Phonograph Company on the Coast.

1 If you have any knowledge of the whereabouts of these two reels in question, I could probably convince you of the truthfulness of the above report by a willingness to begin replevin suit for the recovery of these reels, as we have been considering them as stolen property.

2 I would like to take this opportunity of advising you that since I purchased the Theatre Film Service Company interest in June last, there has not been any violation of the license agreement, and in view of the fact that I was fully aware that unscrupulous competition in this city was ever on the alert to register a kick, I have been extra-ordinarily careful to warn all employes that they must not violate any of the conditions of the Patents Company. If you will search your files during the early part of last year, you will locate letters from me in which I was protesting against certain exchanges here disseminating information throughout the state to the effect that the Theatre Film Service Company's license would be cancelled. The fact that we are the newest comers in the film-renting field here has made them consider us as interlopers, and their reasons for objecting to our presence in the field are plain. I am entirely willing at all times to furnish you 3 any information regarding any alleged violations of our contract, as it is far more gratifying to me to clear up misunderstandings of this kind, than to have them go unexplained.

I would like to call your attention to the following facts, namely: that since I purchased the interest of my associates last June in the Theatre Film Service Company, our film purchases have increased one hundred per cent. in seven months. The fact that we are making such strides is due to the manner in which we are handling our business here, and you can readily understand that we could not afford 4 to make these increases unless our business warranted same, and while last June we were purchasing but six reels of film per week, our standing order now amounts to twelve reels, we having increased it on the first of February. We are not resorting to dishonest methods nor price-cutting to obtain business; in fact, I believe we are obtaining better rates for our service than any exchange in the city. The class of theatres which we are supplying in this city are the leading ones.

It has been a hope of mine during the past year that I could eliminate the jealous feeling that exists amongst the various exchanges here, and while Mr. Kleine was visiting the coast last year we arranged a little social gathering each week, but these meetings grew to be of such a character that it was deemed advisable to discontinue them.

I have no hesitation in stating that a circular letter sent to the various theatres in the state, inquiring into the matter of first-class service and good treatment, that the Theatre Film Service Company would get more than its share of supporters.

As an illustration of the methods adopted by one concern here in the city, which also has a New York office, I would cite the following method of their obtaining business: their office manager equipped himself with a complete assortment of newspaper clippings regarding my domestic difficulties, and while calling upon the various theatres throughout the state shows them to our customers in an effort to influence them to leave our service. Another illustration of their antagonism is the fact that one employe whom I discharged for dishonesty the early part of last year made application to them for a position, and they rang me up over the telephone and asked me as to his character. I informed them in confidence that he was discharged for dishonesty, and they immediately engaged the man. This is in keeping with their general method of competition for business here.

It is extremely annoying to me to be compelled to notice these unscrupulous attacks, and nothing would please me better than to have you make a careful investigation of any complaints that might be made against this office; in fact, I think if a representative of the Patents Company were to make a visit to this city for the purpose of investigating conditions, it might probably result in a demand for explanations regarding the acts of other exchanges.

Regarding the sale of film, I wrote the Patents Company a letter last spring or summer to the effect that an exchange in this city had sold outright forty reels of film, to be shipped to New Zealand. I was in a position to furnish convincing proof in this matter, inasmuch as the party who purchased this film bought a machine from us and brought the film down in a trunk to our place of busi-



1   ness to be shipped. At the time, we had a list of the subjects, and could also furnish the price paid for these films, and the name of the party to whom the sale was made, but we were not asked for any further information along these lines.

I would be entirely pleased to furnish you any information regarding the matter referred to in your letter, if you desire same, and all that I ask is that you afford me an opportunity to meet any charges that may be filed against this office.

2   There is now being reported around through the state by Miles Bros., Manager Scearoni, and Turner & Dahnken, Manager Johnson, rumors to the effect that the license of the Theatre Film Service Company will be cancelled very soon. I can furnish you affidavits to this effect if you so desire, and enclose you herewith a letter from a licensed exhibitor, which will show you the sort of competition that I have in this field. Kindly return same for our files. I do not consider that the tactics adopted by these exchanges are at all honorable, and I do not feel that inasmuch as they are not able to compete with us along  
3   legitimate lines for business that they should adopt such unscrupulous methods for obtaining business. The fact that this office is growing is the best proof of our handling our business in a legitimate manner, and the class of customers which we are supplying is further proof of the matter.

I did not intend to go into this matter so deeply when starting to answer your letter, but the fact that these conditions are so interwoven seems to me to make it an opportune time to make these explanations. I trust that the above information will enable you to thoroughly understand  
4   this matter, and as I stated before, I stand ready to furnish you affidavits to the effect that these reels were not sold, but released, and that we are ready to replevin them, if you can advise us of their whereabouts.

Yours very truly,

THEATRE FILM SERVICE CO.

Per A. J. Clapham.

Enclosures.

Rubber stamp: Received Feb. 16, 1910. Ansd. None  
F. H.

By Mr. KINGSLEY:

1

Q. What day was it you left San Francisco for the East? A. What particular trip do you have reference to?

Q. The trip that you described at the beginning of your examination. A. The time that I came on to live here in New York?

Q. The time that you started East, you say. A. I made as high as four trips a year.

Q. What time in February, 1910, did you come East to see about your license? A. I left the day of that stoppage of the supply of films.

2

Q. Do you know what date? A. The date is not clear to me. But it was before that letter reached San Francisco from the Patents Company.

Q. Do you know the Independent Film & Supply Company? A. Yes, sir.

Q. Were you interested in that company? A. I was, in a way, and I was not.

Q. Was that an exchange? A. Yes, sir.

Q. Was it a licensed exchange? A. No, sir.

Q. At what time were you interested in it? A. I was never officially interested in it.

3

Q. Where did it do business? A. At the corner of Second and Market Streets, San Francisco.

Q. What was the name of the building? A. I don't recollect.

Q. The Balboa Building? A. The Balboa Building.

Q. And was the stock in trade of that company partially taken from the stocks of the Western Amusement Supply Company? A. No, sir.

Q. And the Theatre Film Service Company? A. No, sir. The film was purchased from Williams, Brown & Earle of Philadelphia.

4

Q. Who was the general manager of the Independent Film Supply Company? A. A man by the name of Lawrence.

Q. And did Lawrence also act as the manager for you at the Theatre Film Service Company's office? A. He was the manager prior to going into that Independent Film Supply Company.

Q. Weren't you the principal owner of the Independent

1 Film & Supply Company? A. I was not a stockholder of record.

Q. Were you the principal owner of the Independent Film & Supply Company? A. I was not a stockholder of record. I did not own any of the shares of stock.

Q. I did not ask you that. A. I was not a shareholder.

Q. I am asking you if you were not the principal owner of it? A. I was the power behind the throne, but I was not a shareholder.

2 Q. And this Independent Film & Supply Company regarding which you have testified you were the power behind the throne, was not a licensed exchange? A. Not to my knowledge.

Q. It was dealing in unlicensed films, was it not? A. Yes, sir.

Q. Mr. Lawrence left your employ, you say, to take charge of the Independent Film & Supply Company? A. Yes, sir.

Q. He did it with your consent, did he not? A. Yes, sir.

Q. And he made reports to you as to the profits of the business? A. Yes, sir.

3 Q. And this was while you were conducting the licensed exchange known as the Theatre Film Service Company of San Francisco? A. Yes, sir.

Q. I show you, Mr. Clapham, a letter on the letterhead of the Theatre Film Service Company, 76 and 78 Second Street, San Francisco, California, dated January 8th, 1910, and ask you if it is your letter, signed by you (handing paper to witness)? A. (witness examining paper): Yes, sir.

4 Mr. KINGSLEY: I offer it in evidence.

The paper identified by the witness is marked Defendants' Exhibit No. 28, and is as follows:



**Defendants' Exhibit No. 28.**

1

THEATRE FILM SERVICE CO.

(Incorporated)

76 and 78 Second Street

(Part of letterhead omitted.)

San Francisco, 1/8/10.

Motion Picture Patents Co.,

80 Fifth Ave.,

New York City.

2

Gentlemen:

We would like to call your attention to the matter of returning old films and would state that it has been our experience that at least 25% of a film is lost during the seven months of its lease, and in many instances it has been even greater than this and we have figured that we are returning about three reels for every two which we lease, and it strikes us particularly hard in view of the fact that we have no old stock on hand other than that which is being constantly used and furthermore the fact that this exchange is one of the latest arrivals in the field has not accumulated any junk, and to withdraw good reels from our service, foot for foot, with no allowance for the loss of film occasioned by repair work, works a hardship on us.

3

We respectfully draw this matter to your attention and would suggest that a 25% allowance, would, in our estimation, be a very reasonable allowance in the return of this old film.

We trust to hear from you along these lines.

4

Yours very truly,

THEATRE FILM SERVICE CO.,

per A. J. Clapham

AJC

(S)

Rubber stamp: Received Jan. 14, 1910. Ansd. None F. H.

AJC

1 By Mr. KINGSLEY:

Q. Was this letter which you have just identified, and which is marked Defendants' Exhibit No. 28, based upon your experience in regard to the rapidity with which film wore out? A. Yes.

Q. And you found that film in active use rapidly deteriorated, did you not? A. I figured that a film in use for a year steady would lose a hundred or more feet, and sometimes even greater. I have had reels lose two or three hundred feet out of them the first week they went in service.

2 I estimated twenty-five per cent. loss on a film during the time it was being used.

Q. That was during seven months? A. That was a film being cut up and damaged.

Q. That means parts which must be cut out and thrown away? A. Yes. While being repaired.

Q. At your Theatre Film Service Company, did you have a splicing clerk, or a repair clerk? A. I had a half a dozen of them.

3 Q. You found it necessary, when a film came back from the exhibitor, to run it through, examine it, and remove any portions that had been damaged, did you not? A. We used to take out almost a barrel of clippings every day.

Q. And you found that this made quite a difference in the length of the film? A. It shrinks a reel up in time.

Q. Now, what was the cause of this rapid wear and tear and deterioration of the film? A. Well, in one particular lot of films, I noticed it was on account—

Mr. GROSVENOR (interrupting): I object to all this as being improper cross examination, and going into new subjects.

4

A. (continued): In one particular lot of films, I noticed it was caused by this non-inflammable stock that the trust manufacturers were putting out. Some of the films did not last more than thirty days before they were cut out 40 or 50 feet at a time.

By Mr. KINGSLEY:

Q. You did not find that a practicable kind of film at that time? A. No.

Q. But the regular film, and by that I mean the kind that you generally received, the celluloid film, that went to pieces rapidly, did it? A. No; with the celluloid films, at times you would get reels that would be badly worn on you, but I remember that the loss in nine months' time would average about twenty-five per cent. 1

Q. Here you say seven months. A. I don't remember now whether the leasing time is seven or nine.

Q. You stand by the letter, don't you? A. I stand by whatever the license agreement calls for. Nine or seven.

Q. At that time you made an estimate? A. It was a rough estimate. 2

Q. At that time you made an estimate based upon the license agreement term? A. Yes.

Q. And you figured that twenty-five per cent. was a fair allowance to the rental exchange for wear and tear and depreciation and the parts that had to be thrown away? A. Yes, sir.

Redirect examination by Mr. GROSVENOR:

Q. These bills which were introduced by defendants during cross examination were bills forwarded by you to them? A. No, sir. 3

Q. Please look at this letter which is produced by the defendants, a letter of yours, dated February 11th, 1910, Defendants' Exhibit 27, with a stamp upon it, February 16th, 1910, and written in pencil certain words which I cannot read. Are you able to state whether or not you ever received any reply to that letter (handing paper to witness)? A. (witness examining paper): I don't recollect receiving any response to that letter.

Recross examination by Mr. KINGSLEY: 4

Q. After writing the letter dated February 11th, and marked Defendants' Exhibit 27, you went East on that day, or within two or three days after? A. Within two or three days after.

Redirect examination by Mr. GROSVENOR:

Q. Your trip to the East was made before your office had received the notice of cancellation dated February 8th? A. Yes, sir.



1       JOSEPH HOPP, a witness subpoenaed by the petitioner, being first duly sworn by the Examiner, testified as follows:

Direct examination by Mr. GROSVENOR:

Q. Where do you reside, Mr. Hopp? A. 450 West Wrightwood Avenue, Chicago, Illinois.

Q. Mr. Hopp, where were you doing business in the years from 1908 to 1910? A. In the City of Chicago, State of Illinois.

2       Q. In what business were you engaged? A. Rental exchange; film rental exchange.

Q. Please state the name of your company? A. Standard Film Exchange, an Illinois corporation.

Q. Were you the principal manager and owner of that company? A. Not at that time. I was the manager and half owner at that time. That is, half the stock.

Q. You were the active man directing the business of the company? A. Yes, sir.

Q. Was your company a member of the Film Service Association in the year 1908? A. Yes, sir.

3       Q. You may state whether your rental exchange took out a license from the Patents Company in the early part of 1909 after the Patents Company was organized and commenced doing business? A. We did.

Q. Did you attend a meeting of the Film Service Association, or a meeting of the rental exchanges held at the Hotel Imperial in the early part of January, 1909? A. I did.

Q. Was that the meeting at which the printed forms of the so-called Rental Exchange License Agreement were submitted to the rental exchanges? A. Yes, sir.

4       Q. You may state whether most of the manufacturers in the country, that is, manufacturers of film doing business in the country at that time, and also the principal importers, joined the Patents Company and took out licenses from that company. A. All that were known to me did, yes, sir.

Q. You may state whether or not the fact that practically all manufacturers and importers of the motion picture films had joined the Patents Company, had any effect on you in inducing you to take out one of these rental exchange license agreements with the Patents Company in the early part of 1909?

Mr. KINGSLEY: I object to that question as suggestive and leading. 1

The Witness: It did.

Q. How so? A. The mere fact that it had the only films that were available at that time.

Q. Were objections made by the rental exchanges at this meeting in January, 1909, against these license exchange agreements? A. Some of the exchanges represented at that particular meeting made objections in some form or another. Some did not.

Q. After you took out your license agreement with the Patents Company, did you do business renting motion picture films during the years 1909 and the larger part of 1910, according to the terms of those agreements, to the best of your ability? A. I did. 2

Q. About when was it that the General Film Company, defendant in this case, entered upon the business of renting films? A. As the General Film Company?

Q. To the best of your recollection? A. I think it was in the early part of 1910.

Q. Now, up to September, 1910, you may state whether or not any of the licensed exchanges doing business in Chicago, had been acquired by the General Film Company? A. All but two. 3

Q. All but two had been so acquired? A. Yes, sir.

Q. And what were those two? A. All but three. I want to correct that.

Q. Now, you may state whether or not you had any conversations in the Summer of 1910 with any of the so-called licensed manufacturers in relation to or in regard to the formation of the General Film Company and its entering upon the rental exchange business? A. Well, I had conversations with two or three at different times. 4

Q. Please name the manufacturers? A. There was only one manufacturer. The others were representatives. Mr. William Selig was the only manufacturer that I remember at this time having a conversation with.

Q. Who else? A. Mr. Montague, at that time representing Pathe Freres, and Mr. Moore, I believe, representing the Edison Company, if I remember correctly.

Q. Are these the Chicago representatives of the two com-

1 panies named? A. At this particular time, Mr. Moore was at a meeting of the Film Service Association.

Q. Please state what was said, to the best of your recollection, by Mr. Selig in regard to the purposes of the General Film Company and what it was going to do?

Mr. KINGSLEY: Objected to as incompetent, immaterial and irrelevant, as hearsay, and not binding upon the defendants.

2 By Mr. GROSVENOR:

Q. This Mr. Selig is the Selig of the Selig Polyscope Company? A. Yes, sir.

Q. A Director in the General Film Company? A. Yes, sir. So I think.

Q. Please continue.

Mr. KINGSLEY: Same objection.

3 A. Mr. Selig explained to me the objects and aims of the General Film Company, and what it hoped to accomplish in the way of regulating—

Mr. KINGSLEY (interrupting): I object to the witness putting the statement in the form of a conclusion. I ask that he repeat the conversation.

By Mr. GROSVENOR:

4 Q. State the conversation to the best of your recollection, giving the substance of what he said, in your own way? A. He told me they were going to regulate the rental business and stop the difference in rentals between low and high prices, so far as it affected the exhibitor. That it was the only course to pursue. Those that were without the pale of the General Film Company would have to get out of business in due course of time as the result of acknowledgment of patent rights.

Q. Was anything said about your selling your business out to the General Film Company? A. Yes. We dicussed it. There was nothing definite. We talked of it.

Q. I show you a letter, dated September 22nd, 1910, on



the letterhead of the Motion Picture Patents Company, and ask you if that is the letter received by your company about the time stated on the letter (handing paper to witness)? A. (witness examining paper): Yes, sir. 1

Mr. GROSVENOR: I offer that in evidence.

Mr. KINGSLEY: This letter is objected to as incompetent, immaterial and irrelevant, and not properly proved.

The paper identified, and offered, is marked Petitioner's Exhibit No. 186, and is as follows: 2

**Petitioner's Exhibit No. 186.**

**MOTION PICTURE PATENTS COMPANY.**

80 Fifth Avenue, New York.

September 22, 1910.

Dear Sir:

The license of the Standard Film Exchange of Chicago, Ill., has been cancelled, and this Exchange will not be able to supply licensed service to exhibitors after Saturday, September 24, 1910. 3

The following is submitted for the information of exhibitors:

On August 19, 1910, the General Film Company submitted to us the following letter from the Standard Film Exchange:

"Chicago, Aug. 17, 1910.

President of the General Film Company,  
10 Fifth Ave.,  
New York City. 4

Dear Sir:

I have always been the active Manager of our Exchange excepting for a period of about four months—during which time a Mr. Charles C. Pyle was given that position by me. Recently we had to dispense with his services for good and sufficient cause. I have again assumed the active management of our Exchange and shall continue in that capacity, be-



our sincere thanks for your very courteous offer, 1  
which we are unable to take up at this time.

Yours very truly,  
GENERAL FILM COMPANY,

P. L. Waters,  
General Manager."

PLW/C

Our action was prompted by the fact that those interested in the Standard Film Exchange are interested in theatres extensively, and that on September 14, 1909, this Exchange was convicted of maintaining an unauthorized branch exchange through which it sub-rented film and obtained an unfair advantage over other exhibitors and exchanges. 2

It was represented to us that a widow who had no part in the management of this exchange, had nearly all her money invested in it and for this reason we were urged not to cancel its license.

These representations induced us to postpone the cancelling of its license, and instead, to require the Exchange to contribute \$1,000 toward the cost of obtaining the evidence on which it was convicted, to dismiss and not again employ the manager of its unauthorized office, to close said office, and to require all theatres in which those connected with the Standard Film Exchange had any interest, to obtain service from other exchanges. 3

Exhibitors in the vicinity of Chicago, who have heretofore received service from the Standard Film Exchange, can obtain licensed service from the following exchanges:

General Film Company, 85 Dearborn Street, Chicago, Ill.

General Film Company, 77 South Clark Street, Chicago, Ill. 4

George K. Spoor Company, 435 North Clark Street, Chicago, Ill.

H. & H. Film Service, 98 Jackson Boulevard, Chicago, Ill.

General Film Company, 71 Griswold Street, Detroit, Mich.

H. Lieber Company, 24 West Washington Street, Indianapolis, Ind.



1       Pittsburg Calcium Light & Film Company, 421 Walnut Street, Des Moines, Iowa.

      Twin City Calcium & Stereopticon Company, 709 Hennepin Avenue, Minneapolis, Minn.

      Western Film Exchange, 210 Sycamore Street, Milwaukee, Wis.

      Montana Film Exchange, 41 N. Main Street, Butte, Montana.

      Pittsburg Calcium Light and Film Company, 1318 Farnam Street, Omaha, Nebraska.

2                               Yours very truly,  
                              MOTION PICTURE PATENTS COMPANY.

---

By Mr. GROSVENOR:

Q. Mr. Hopp, I show you two other letters, dated September 15th, 1909, and September 22nd, 1909, respectively, on the letterhead of the Motion Picture Patents Company, and ask you whether those are two letters received by you from that company (handing papers to witness? A. (witness examining papers): They are.

3

      Mr. GROSVENOR: I offer those in evidence.

      The letter of September 15th, 1909, identified by the witness, is marked Petitioner's Exhibit No. 187, and is as follows:

**Petitioner's Exhibit No. 187.**

MOTION PICTURE PATENTS COMPANY

4                               80 Fifth Avenue, New York City.

September 15, 1909.

Standard Film Exchange,  
79 Dearborn Street,  
Chicago, Ill.

Gentlemen:

You are hereby notified that the following penalty has been imposed upon you for the violation by you of your license agreement:

First, you are required to pay to this Company a fine of one thousand (\$1000.00) dollars; 1

Second, you are required to discontinue licensed service to all theatres owned or controlled by the Standard Amusement Company or by the Standard Film Exchange, and you are not permitted to again supply service to any theatres owned or controlled by this company or by the Standard Film Exchange;

Third, you are required to terminate the connection of Mr. Thompson with your Company, and not to again employ him. 2

Yours truly,

MOTION PICTURE PATENTS COMPANY

HNM/JK

By H. N. Marvin, V. P.

The letter of September 22nd, 1909, identified by the witness and offered, is marked Petitioner's Exhibit No. 188, and is as follows:

**Petitioner's Exhibit No. 188.**

MOTION PICTURE PATENTS COMPANY 3

80 Fifth Avenue

New York City

September 22nd, 1909.

Standard Film Exchange,  
79 Dearborn St.,  
Chicago, Ill.

Gentlemen:

Replying to yours of the 18th addressed to our Western Committee, the requests contained in your letter were considered at the meeting of the Manufacturers yesterday, and it was decided that you would be permitted to make payment of the \$1,000 penalty by making monthly payments of \$200 each, payments to be made on the first of each month, beginning with the first of October. 4

It was further decided that you would not be permitted to supply service to the two houses mentioned by you, so long as these houses were controlled by your company, but

- 1 that you would be permitted to supply these houses after a *bona fide* transfer of their ownership to other parties.

Yours very truly,  
MOTION PICTURE PATENTS COMPANY,  
By M.

HNM/AL.

---

- 2 By Mr. GROSVENOR:

Q. Mr. Hopp, are there any facts which you care to add in connection with these letters in regard to the matters referred to therein? A. There are some that I could add. Have you reference to that last letter, where I was required to pay a thousand dollars fine?

- 3 Q. Well, let us take that one. Take Petitioner's Exhibits 187 and 188. A. Well, in reference to this letter from the Motion Picture Patents Company, signed by Mr. Marvin, Vice-President, September 15th, 1909, I can explain what that business was up there at Sioux Falls, South Dakota. The office up there, the Standard Amusement Company, was in existence at the time of the formation of the Patents Company, or rather, prior to its formation, or at least, its announced existence. The Standard Amusement Company was a theatrical enterprise, or rather, the Standard Amusement Company was a South Dakota corporation owning several places of moving picture exhibition. I was one of the stockholders of that company. The Standard Film Exchange had what in those days was known as a distributing office, shipping films from its Chicago office to  
4 Sioux Falls, and Mr. Thompson there distributed films. I was summoned over to the office of what was then known to the trade as the Western Committee of the Motion Picture Patents Company—

Mr. KINGSLEY (interrupting): I object to the expression "summoned over."

The Witness: Well, I was summoned. I was ordered over, peremptorily ordered.



Mr. KINGSLEY: I move to strike that out, as a 1  
conclusion of the witness.

By Mr. GROSVENOR:

Q. Who comprised that committee which you call the Western Committee? A. Mr. William Selig, Mr. George K. Spoor, and Mr. George Kleine.

Q. Did you go over? A. Yes, sir; they called me on the 'phone and very tersely ordered me to come over. And I went. Several times.

Q. Please state what happened? A. They asked me in 2  
reference to the furnishing of one or two or possibly three certain theatres in the State of South Dakota. I informed them that I knew of one, but that the other two that I did not at that time know of, that they were being furnished.

Mr. KINGSLEY: You mean with licensed film?

The Witness: Yes, sir. The gentlemen stated they would be over some day to examine the books of the Standard Film Exchange in my place of business in the City of Chicago. One morning Mr. George Kleine, accompanied by 3  
Mr. Montague, representing Pathe Freres at that time, came to my office and asked to see my books. I showed them to them. They made no statement to me at the time of leaving there, what conclusion they had arrived at, if any. However, following that, a very short time thereafter, I received this letter signed by Mr. Marvin (indicating).

By Mr. GROSVENOR:

Q. Petitioner's Exhibit 187? A. Yes; 187. I called Mr. George Kleine on the 'phone, with whom I was well acquainted, and told him of the receipt of the letter. He told 4  
me that he already knew of it. I told him it was a hardship on me to pay a thousand dollars, and I could not pay it.

Q. You were fined one thousand dollars? A. One thousand dollars for conducting an unauthorized place of business at South Dakota. Because I had not taken out a license or received one.

Q. Continue and state what happened. A. Mr. George Kleine told me he would see what he could do. I ex-

1 plained the situation. At that time the gentleman who  
owned half of the Standard Film Exchange had died, and  
his widow, Mrs. Welch, of course, got his half interest. I  
represented to Mr. George Kleine at the time that the pay-  
ment of this thousand dollars or anything of that kind  
would be a hardship, that Mrs. Welch had her money in  
there, and he should consider all the circumstances. Mrs.  
Welch was not active in the business. He said he would  
take up the matter and see what he could do. He later  
informed me that he had made arrangements for me to  
2 pay it in five monthly installments of two hundred dollars,  
which I paid as they were due.

Q. This was in the year 1909? A. Yes, sir.

Q. And your license was cancelled in September, 1910?

A. I got notice of cancellation. I had prior to that sent  
them a telegram, in reference to discharging Mr. Thompson.  
I was ordered to discharge him and not employ him again.  
Later than that, I wrote either the Western Committee of  
the Motion Picture Patents Company or direct to New York,  
I don't recollect which,—the letters will show,—represent-  
ing to them that Mr. Thompson was a married man, and so  
3 forth, and should have some work, and should not be denied  
employment, and that I would like to retain him at least  
for bookkeeping purposes. And afterwards I got a letter  
from them saying that I could continue Mr. Thompson as  
bookkeeper, but should not use him in any other capacity.

Q. Mr. Hopp, you have produced quite a batch of let-  
ters in response to subpœna of the Government. I show  
you certain ones, and ask you to state whether or not these  
are typical of the course of business and the manner of  
doing business between you and the Motion Picture Patents  
Company during the period in which you conducted busi-  
4 ness under the license that you have referred to (handing  
papers to witness)?

Mr. KINGSLEY: I object to that question as in-  
volving a conclusion of the witness and calling for  
a characterization, and on the ground that the letters  
themselves would be the best evidence. It is not  
within the province of this witness to characterize  
these letters for the purposes of this record. It is  
irrelevant and immaterial and incompetent.

By Mr. GROSVENOR:

1

Q. Look them over, Mr. Hopp, please, and then I will have them put in evidence if you will identify them as letters received by your company from the Patents Company. A. Do you want one blanket answer to all of them?

Q. Look at every one and then you can answer them all. A. (witness examines papers): Yes, they were typical of the correspondence sent me.

Mr. KINGSLEY: I move to strike out the answer of the witness as a conclusion, and a characterization, and as being argumentative.

2

Mr. GROSVENOR: I will offer those in evidence, and ask the Examiner to mark them separately in the order in which they occur, please, and then copy them in the record.

The papers identified by the witness are marked in evidence as Petitioner's Exhibits 189, 190, 191, 192, 193, 194, 195, 196 and 197, respectively, and are as follows:

3

4



1                    **Petitioner's Exhibit No. 189.**

## MOTION PICTURE PATENTS COMPANY

Headquarters Western Committee

45 Randolph Street

Chicago

April 28, 1909.

Standard Film Exchange,

79 Dearborn St.,

2                    Chicago.

Gentlemen:

We hereby notify you that you are not to furnish licensed film to Weinberg & Flicht of 778 North Ave., until further notified by the Western Committee.

Yours very truly,

MOTION PICTURE PATENTS COMPANY,

Western Committee.

3                    WNS-W

---

 **Petitioner's Exhibit No. 190.**

## MOTION PICTURE PATENTS COMPANY

80 Fifth Avenue

New York City.

September 30th, 1909.

Standard Film Exchange,

4                    79 Dearborn St.,

Chicago, Ill.      X90

Gentlemen:

You are hereby notified that we have cancelled the license of the Lyric Theatre at Blair, Nebr., State Amusement Company Proprietors, on account of the exhibition of unlicensed film.

Do not supply any film for use in this theatre after receipt of this letter without notice from us.

We direct your attention to the following extract from our Exchange letter Form 11, dated February 10th, 1909. 1

"All contracts for service either to old or new customers should be made subject to the conditions that the exchange may discontinue the service upon receiving notice from the Patents Company that the license to the theatre has been withdrawn, or that a license to the theatre will not be issued, or that the application claimed by the theatre to have been sent to the Patents Company has not been received."

2

Very truly yours,  
MOTION PICTURE PATENTS COMPANY,  
By M.

HNM/

---

**Petitioner's Exhibit No. 191.**

MOTION PICTURE PATENTS COMPANY

80 Fifth Avenue

3

New York City

January 25, 1910.

Standard Film Exchange,  
159 E. Washington St.,  
Chicago, Ill.

Gentlemen :

Replying to yours of January 22nd.

We notified Exchanges not to rent films to F. W. Marble, Fenton, Mich. at the recommendation of our Western Committee. 4

As you are in Chicago, we would suggest that you take this matter up, personally, with the Western Committee.

Yours very truly,  
MOTION PICTURE PATENTS COMPANY,  
By JB

JB/AMM  
X-90

1

**Petitioner's Exhibit No. 192.**

## MOTION PICTURE PATENTS COMPANY

80 Fifth Avenue

New York City

March 14th, 1910.

Standard Film Exchange,  
159 E. Washington St.,  
Chicago, Ill.

2

Gentlemen :

Referring to

Vaudette Theatre, #6371

Moline, Illinois

Ross &amp; Ross

Under date of January 8th we wrote to these exhibitors  
as follows :

3

"We have a record of a theatre operated by Ross & Adler at the above place. Will you be good enough to let us know if this is the same theatre now operated by you, under the name of the Vaudette Theatre, License Number 6371.

"Enclosed please find return envelope for your convenience in replying."

Under date of January 26th and again on February 24th we wrote them, requesting a reply to our letter of January 8th.

4

The above is information which we need for our files, and unless we receive same on or before April 1st, we shall have to notify you to discontinue service to the theatre referred to.

Yours truly,

MOTION PICTURE PATENTS COMPANY,

By F. H.

FH/JK

X-90



**Petitioner's Exhibit No. 193.**

1

**MOTION PICTURE PATENTS COMPANY**

80 Fifth Avenue, New York City

May 2nd, 1910.

Mr. E. Soling,  
Star Theatre, 4623.  
289 E. 43d St.,  
Chicago, Ill.

Gentlemen :

2

We have received through the Standard Film Exchange application in your name for license for the Star theatre.

Upon examining our records we find that you are in arrears for royalty for the period from July 26th, 1909 to August 23rd, 1909, and from August 30, 1909 to Sept. 13, 1909, and from Oct. 4th, 1909 to March 7th, 1910.

We will grant you a new license under the following conditions :

1st. That you pay the back royalties that have accrued amounting to Fifty-Six dollars.

3

2nd. That you use in your projecting machine only film made by a licensed manufacturer and obtained through a licensed exchange. This film must not be loaned or sub-rented.

3rd. That you pay us \$104.00 as advance royalties for so much of the year beginning April 25, 1910 during which you remain a licensee of this Company. If you voluntarily give up licensed service or if your license is terminated by us for breach of any conditions governing the use of licensed film before the end of said year, the said sum shall be considered as royalty for that portion of the year in which you were a licensee.

4

Your exchange has been notified that your service may be continued after May 7th, 1910 upon the above terms only.

Yours very truly,

**MOTION PICTURE PATENTS COMPANY,**

By

FH—KVB.

Copy to X. 90.

1

**Petitioner's Exhibit No. 194.****MOTION PICTURE PATENTS COMPANY**

80 Fifth Avenue, New York City

June 9, 1910.

Standard Film Exchange,  
159 E. Washington St.,  
Chicago, Ill.

2      Gentlemen:

We have not as yet received the information sheet which  
we mailed to your customer

14841

717 N. Clark St.,  
Chicago, Ill.

J. C. Jackson.

X90

3      After waiting some time for the return of this information sheet to us, filled out as requested, we advised the exhibitor referred to, that unless we received this Information Sheet within a reasonable length of time, the exchange furnishing service would be notified to discontinue such service.

We enclose a duplicate Information Sheet, and, if we do not receive the desired information on or before June 18, 1910, you will be instructed to discontinue service to said exhibitor.

Very truly yours,

MOTION PICTURE PATENTS COMPANY,

By F. H. L.

FH—EM.

4

X90

**Petitioner's Exhibit No. 195.**

1

## MOTION PICTURE PATENTS COMPANY

80 Fifth Avenue, New York

July 12th, 1910

The Standard Film Exchange,  
Chicago, Ill.

Gentlemen :

Replying to yours of July 9th.

We enclose copy of our letter to the Grand Theatre,  
Plattville, Wis.

The application for license for the Star Theatre South  
Bend, Ind. was refused at the recommendation of the West-  
ern Committee and is at present being investigated further.

Yours truly,

MOTION PICTURE PATENTS COMPANY,

By J. B.

JB/CM  
X90

3

**Petitioner's Exhibit No. 196.**

July 15, 1910

Motion Picture Patents Co.,  
New York City, N. Y.

Gentlemen :

Your favor of the 11th inst. written by G. E. J. at hand,  
in which you state you have received an application for a  
license for—

4

Globe Theatre  
57 Grove St. 16017  
Elgin, Ill.  
J. S. Sullivan.

The population of Elgin at this time is in excess of thirty  
thousand and is about the same size as Aurora and Joliet.



- 1 All three of these cities are about the same distance from Chicago, and of like size.

The two licensed exhibitors at Elgin are working in perfect harmony in hopes of excluding anyone else. This condition has existed for a long time. Elgin is big enough to support at least four licensed exhibitors. In looking up your list at Joliet and Aurora, you will find quite a number of licensed exhibitors in each town, all of them getting along nicely. Elgin would support an equal number of licensed exhibitors as cities mentioned. We are giving this as an unbiased opinion based wholly on conditions. It is desirable that a third or even a fourth license be issued for the city of Elgin and it can only help the licensed film interests. You will make no mistake by granting this license.

Yours very truly,

Standard Film Exchange.

JH—DF

---

**Petitioner's Exhibit No. 197.**

3

**MOTION PICTURE PATENTS COMPANY**

80 Fifth Avenue, New York City.

July 19th, 1910.

Standard Film Exchange,  
159 E. Washington Street,  
Chicago, Ill. X90

Gentlemen:

- 4 The Licenses of the O. T. Crawford Film Exchange Co., St. Louis, Missouri, Western Film Exchange, St. Louis, Missouri and Kay-Tee Film Exchange, Los Angeles, California, have been cancelled.

We hand you herewith a list of the exhibitors served by these exchanges.

Yours very truly,

**MOTION PICTURE PATENTS COMPANY.**

By Jno J R

JJR—WLR.

By Mr. GROSVENOR:

1

Q. Petitioner's Exhibit No. 189, being the letter of April 28th, 1909, addressed to your exchange, states that you are not to furnish licensed film to Weinberg & Flicht until further notified by the Western Committee. Is this the same committee with reference to which you were testifying a few minutes ago? A. Yes, sir.

Q. Here is another letter, being Exhibit 191, dated January 5th, 1910, which says, "We notified exchanges not to rent films to F. W. Marble, of Fenton, Michigan, at the recommendation of our Western Committee. As you are in Chicago, we would suggest that you take this matter up personally with the Western Committee." Did you from time to time take matters up of this sort, with the members of the Western Committee? A. Yes, sir, I did.

2

Q. Mr. Hopp, in the summer of 1910, there was a gradual passing of many rental exchanges into the General Film Company, was there not?

Mr. KINGSLEY: I object to the question as leading and suggestive and as prompting the witness.

Mr. GROSVENOR: That has been testified to a thousand times already.

3

Mr. KINGSLEY: Then I object to it also on the ground that it is repetition.

A. Yes, sir; quite a number.

Q. How many did you say of the exchanges were left in the City of Chicago, about September, 1910? A. You mean those that were handling Patents Company goods and were not already in?

Q. I mean how many of those which had originally been licensed exchanges, were still doing business under their own name and had not either been cancelled or been merged in the General Film Company? A. Two, at that time. At that particular time there were two left.

4

Q. You may state whether or not as a result of these changes which had occurred in the conditions or in the business at Chicago, that had any effect upon you in sending the telegram or a letter or other communication to the Patents Company on or about the date of your cancellation? A. It did.

1           Mr. KINGSLEY: Objected to unless the tenor and purport of the telegram is stated.

By Mr. GROSVENOR:

Q. And was that the telegram to which you referred somewhat earlier in your examination? A. Yes, sir.

Q. By that telegram, what did you notify the Patents Company? A. Do you want the substance as near as I remember it?

2           Q. Yes. I don't find it here. Cannot you state it briefly without going into it in detail? A. I told them, owing to their monopolistic tendency and enforced exploitation of exhibitors, I felt I could no longer take their films, and asked to be relieved of taking any further films from them.

Q. Do you know, Mr. Hopp, of any of the rental exchanges that voluntarily and willingly collected the \$2 per week from the exhibitors?

3           Mr. KINGSLEY: Objected to as incompetent, immaterial and irrelevant, not binding upon the defendants, and as asking the witness to describe a state of mind on the part of others which he is manifestly incompetent to do.

A. I don't know of a one that did it willingly or voluntarily.

Q. I beg your pardon? A. I don't know of a one that did it voluntarily or willingly. I know I did not.

Q. Did you have any conversation with any of the members of the Patents Company in connection with the collection of this \$2 per week? A. No. None other than the correspondence that passed between the Motion Picture Patents Company and our corporation.

4

Cross examination by Mr. KINGSLEY:

Q. What was the date of this telegram which you sent to the Motion Picture Patents Company? A. It was during the same week that I got notice of cancellation from the Patents Company.

Q. It was prior to getting the notice of cancellation, was it not? A. Yes.



Q. You surrendered your license? A. I thought I did, yes, sir. That was my intention. 1

Q. That was your intention? A. Yes, sir.

Q. Did you have the Standard Film Exchange at the time the Patents Company was organized? A. Yes, sir. That is—

Q. (interrupting): Did you have the Standard Amusement Company at Sioux Falls at the time the Patents Company was organized? A. Yes. I was merely a party in interest.

Q. You had an interest in it at the time the Patents Company was organized? A. I won't say that—you mean the Standard Amusement Company? 2

Q. Yes. A. I won't say that definitely, positively, but I think I did.

Q. Was the Standard Amusement Company in existence at the time the Patents Company was organized? A. I think it was. Yes, I think it was.

Q. So both the Standard Film Exchange and the Standard Amusement Company were in existence when the Patents Company was organized? A. The Standard Film Exchange was. I won't say so positively about the Standard Amusement Company. I think it was.

Q. You swore on your direct testimony that the Standard Amusement Company was in existence at the time the Patents Company was organized, and considerable stress was laid on that. A. I won't say that definitely. It was at the time of these conversations I have referred to. 3

Q. At any rate, the Standard Film Exchange was a licensed exchange, was it not? A. Yes, sir.

Q. And the Standard Amusement Company was an unlicensed exchange? A. The Standard Amusement Company was a theatrical enterprise.

Q. But it was not a licensed exchange, was it? A. No.

Q. And the Standard Amusement Company handled films at various times? A. No. The Standard Film Exchange shipped to the Standard Amusement Company, distributing its films from Sioux Falls to its various theatres. 4

Q. And the films that were shipped by the Standard Film Exchange to the Standard Amusement Company at Sioux Falls were licensed films? A. That is what they were called.

Q. Now, as a matter of fact, did not the Standard Amusement Company have a solicitor out who was seeking business among exhibitors? A. The Standard Amusement Company?

1 Q. Yes. A. No, sir. Positively no. Not to my knowledge.

Q. Didn't you have a solicitor out? A. No, sir.

Q. Seeking business in that territory? A. No, sir.

Q. And was not the stock of films kept on hand by the Standard Amusement Company to supply new exhibitors, whether licensed or unlicensed, who might apply to it?

A. No. Not for that purpose. There was an accumulation of films at Sioux Falls. A small amount.

Q. Money for the use of these films was paid to the Standard Amusement Company at Sioux Falls, was it not?

2 A. Yes.

Q. That was the collection office for the use of a large portion of these films which you say were accumulated by the Standard Amusement Company at Sioux Falls? A. Well, it was not exactly in that form. The gentleman who was handling the Standard Amusement Company and conducting its business was collecting this money and sending it to the Standard Film Exchange. Supposed to, at least. That was the intention.

Q. At any rate, the customers paid at the Standard Amusement Company's office or remitted to it primarily?

3 A. The payments that were made were made by them at that office, yes, sir.

Q. Now, at the time that you were asked to come to the office of the Western Committee, something was said to you about three unlicensed theatres in South Dakota which had been using licensed films which had come from the Standard Films Exchange originally? A. Yes, there was conversation on that line.

Q. And I think you told them there was one theatre that you knew about that was using it? A. Yes.

4 Q. Was that a licensed theatre? A. That I cannot say at this time.

Q. As a matter of fact, you told them you knew it was an unlicensed theatre, didn't you? A. That is possible.

Q. The other two you learned about later? A. As a result of that investigation at that time, yes, sir.

Q. And those two were unlicensed theatres, were they not? A. Yes, sir.

Q. And they had been using and were using when you investigated the complaint, licensed film which had originally been shipped from the Standard Film Exchange in

Chicago? A. You mean that were going to those theatres? 1

Q. Yes. A. Yes, sir, that is true.

Q. Where was Mr. Thompson employed at the time you discharged him? A. Where he was employed?

Q. Where was he working at the time you discharged him? A. At Sioux Falls, South Dakota.

Q. So he was your representative at Sioux Falls? A. Yes, sir.

Q. And was he the manager of the Standard Amusement Company? A. No, sir, not at that time.

Q. Had he been the manager of the Standard Amusement Company prior to that time? A. No, he had not. 2

Q. What was he doing for the Standard Amusement Company at Sioux Falls? By that I mean, in what capacity was he employed? A. For the Standard Amusement Company?

Q. Yes. A. If I remember rightly, Mr. Adams used him on the books there, bookkeeping. Mr. Adams was the gentleman in charge.

Q. Did he go out on the road any? A. Mr. Adams?

Q. Yes, Mr. Adams. A. Yes; I learned afterwards he did.

Q. He had been out on the road, hadn't he? A. Yes, he had been out on the road. 3

Q. Was Mr. Thompson a resident of Sioux Falls? A. No. He was at that time, yes. His family was living there then.

Q. Did you send him there from your Chicago office? A. Originally, yes, sir.

Q. He had been employed at the Chicago office, had he, before he went to Sioux Falls? A. No. Afterwards. Not before that. He had been connected with other exchanges prior to I being the means of engaging him and sending him to Sioux Falls. 4

Q. Did you send him over from Chicago? A. Yes.

Q. Now, with respect to the Standard Amusement Company located at Sioux Falls, did you look after the details of that business yourself, or did you leave it to a manager? A. I left it to a manager.

Q. And who was the manager? A. Mr. C. D. Adams.

Q. Now, Mr. Thompson had been working for licensed exchanges in Chicago, had he not, before he went out to Sioux Falls? A. No; no, I don't think he had. If I re-



1 member correctly, he was at St. Louis prior to that time. Prior to the announced existence of the Patents Company.

Q. When did he go to Sioux Falls to take charge of the Standard Amusement Company or to work for the Standard Amusement Company? A. That also I think was in 1909.

Q. After the formation of the Patents Company? A. No, prior to it.

2 Q. 1909? A. Yes. He was out in that country. He was in St. Louis away prior to that. And also between the time of leaving St. Louis and the announced existence of the Patents Company, he went West.

Q. When do you understand the Patents Company was formed? A. I never knew anything about the Patents Company prior to the Imperial Hotel meeting in 1909.

Q. Was Mr. Thompson already in Sioux Falls? A. Yes.

Q. And you are quite sure then the Standard Amusement Company was in existence at the time of this meeting? A. Yes, sir.

3 Q. Was it Mr. Thompson who shipped the unlicensed films to the theatres in this South Dakota territory? A. They were sent out—he had knowledge of it.

Q. And he is the one whom you held responsible for it? A. He is the one I held accountable, yes, sir.

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EDGAR THORP, a witness subpoenaed on behalf of the petitioner, being first duly sworn by the Examiner, testified as follows:

Direct examination by Mr. GROSVENOR:

4 Q. Where do you live and what is your business? A. Franklin, Pennsylvania. I am in the lumber business, but I have the Orpheum Theatre, at Titusville, Pennsylvania.

Q. Is that a theatre which displays moving pictures at Titusville? A. Yes, sir.

Q. Was that theatre displaying films in August, 1911? A. Yes, sir.

Q. You may state whether or not there was a demand at that time and is now for what are known as special features. A. There is. That is, when we cannot get them from the trust.

Q. Well, I am not speaking of the source of supply. But is there a demand on the part of the people who visit your shows to see what are known as special features? A. There is. 1

Q. Were films entitled "The Burning of Rome" and the "Coronation of King George and Queen Mary," two of the special features which were being displayed in theatres around the country in July and August, 1911? A. Yes, sir.

Q. Please look at the four letters I show you, and read them to refresh your recollection (handing papers to witness). A. (witness examines papers). 2

Q. Are these letters which you received from the General Film Company and the Motion Picture Patents Company, and also your reply to a letter of the General Film Company, on the dates stated in the letters? A. They are.

Mr. GROSVENOR: I offer them in evidence.

The papers identified by the witness are marked respectively Petitioner's Exhibit No. 198, Petitioner's Exhibit No. 199, Petitioner's Exhibit No. 200, and Petitioner's Exhibit No. 201; and the same are as follows:

**Petitioner's Exhibit No. 198.** 3

**GENERAL FILM COMPANY.**

Licenses of Motion Picture Patents Co.

**MOVING PICTURE MACHINES.**

(Part of letterhead omitted.)

Pittsburgh, Pa., August 9, 1911.

Mr. Edgar Thorp,  
Franklin, Pa. 4

Dear Sir:—

We have been advised that the Orpheum Theatre, Titusville, Pa., exhibited "The Burning of Rome" and "The Coronation of King George and Queen Mary" on July 20th.

Neither of these films was secured from this exchange,

1 and we would be pleased to have you advise us if you secured the films from an Independent exchange.

A prompt reply will be greatly appreciated.

Yours very truly,  
GENERAL FILM COMPANY,  
W. T. Kinson,  
Branch Manager.

WK—L.

2

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**Petitioner's Exhibit No. 199.**

EDGAR THORP,  
37 Fifteenth Street, Franklin, Pa.

Franklin, Penna., August 10th, 1911.

General Film Co.,  
Pittsburgh, Pa.

3 Gentlemen:—

Replying to your letter of the 9th relative to the pictures exhibited at Titusville on the night of July 20th. These films were secured by me through the Feature Film Co. of Toledo, Ohio. I do not know whether they are Independent or not they sent us a circular letter offering some features which we booked in for Thursday nights of each week. You will recall that we requested this service of your exchange informing you that we were going to run feature night each Thursday night with a five piece orchestra and you advised us that you could not give us any feature reels.

4 It is pretty hard to secure any feature reels, the best we have been able to do is getting booking on Thursday nights up to August 24th.

Have you any feature reels to offer at this time for Thursday nights commencing Thursday night August 30th.

We will run two feature night if we can get the service



of two good reels on those nights in addition to our regular service. 1

Kindly let us hear from you at once and oblige.

Yours truly,

Edgar Thorp.

(Copy.)

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**Petitioner's Exhibit No. 200.**

2

GENERAL FILM COMPANY.

Licenses of Motion Picture Patents Co.

MOVING PICTURE MACHINES.

(Part of letterhead omitted.)

Pittsburgh, Pa., August 11, 1911.

Mr. Edgar Thorp,  
Franklin, Pa.

3

Dear Sir:—

We are in receipt of yours of the 10th instant, and in reply wish to advise that the films which were exhibited at your Titusville house on July 20th were unlicensed, and therefore, should not have been shown in your theatre.

This matter has been called to our attention by the Motion Picture Patents Company, and it may be possible that your license will be canceled on this account.

We would suggest that you use only licensed pictures hereafter, as it may be possible that they will overlook the first offense but will undoubtedly cancel your license if a thing of this kind happens again. 4

We have noted your request for feature reels, but as all feature films which we have have been shown in Titusville, we have nothing further to offer.

Yours very truly,

GENERAL FILM COMPANY,

W. T. Kinson,

Branch Manager.

WK—L

1

**Petitioner's Exhibit No. 201.**

MOTION PICTURE PATENTS COMPANY.

80 Fifth Avenue, New York City.

August 16th, 1911.

Orpheum Theatre,  
Titusville, Pa.

Gentlemen:—

2

You are hereby notified that your license has been cancelled for exhibiting unlicensed motion pictures.

Yours truly,

MOTION PICTURE PATENTS CO.

JB/EMD

By J. B.

---

By Mr. GROSVENOR:

3

Q. Mr. Thorp, had you displayed in your theatre in July, 1911, these two feature films named in the letter of the General Film Company to you, namely, "The Burning of Rome," and the "Coronation of King George and Queen Mary?" A. We had.

Q. Were those films that were made by any of the licensed manufacturers? A. They were unlicensed.

Q. They were not made by the licensed manufacturers? A. They were not made by the licensed manufacturers.

4

Q. You state in your reply to their complaint, talking about features, "You will recall that we requested this service of your exchange, informing you that we were going to run feature night each Thursday night with a five-piece orchestra, and you advised that you could not give us any feature reels." You may state whether or not it is the fact that you secured these feature reels named after you had been advised by the General Film Company that they could not give you features? A. We did.

Q. In their reply, their letter being dated August 11th, 1911, Petitioner's Exhibit 200, they state: "We have noted your request for feature reels, but as all feature films which

we have have been shown in Titusville, we have nothing further to offer." Were you able to get any feature films or reels from them at that time? A. We were not.

Q. And your license was cancelled August 16th by the Patents Company? A. Yes, sir.

Whereupon, at 12:45 P. M., the hearing is adjourned until 2:30 P. M., at the same place.

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New York City, July 9th, 1913.

The hearing was resumed pursuant to adjournment at 2.30 o'clock P. M., on this July 9th, 1913, at Room 47, Post Office Building, New York City.

The appearances were the same as at the morning session.

Thereupon, EDGAR A. THORP resumed the stand.

Cross examination, by Mr. KINGSLEY:

Q. Mr. Thorp, when was it that you began to run licensed film at your place of business? A. Some time about 20th of December, 1909.

Q. And in the letter marked "Petitioner's Exhibit No. 199," which you sent to the General Film Company, at Pittsburgh, Pa., you make this statement (reading from letter):

"Replying to your letter of the 9th, relative to the pictures exhibited at Titusville on the night of July 20th. These films were secured by me through the Feature Film Co., of Toledo, Ohio. I do not know whether they are Independent or not; they sent us a circular letter offering some feautres, which we booked in for Thursday nights of each week. You will recall that we requested this service of your exchange, informing you that we were going to run feature night each Thursday night, with a five piece orchestra and you advised that you could not give us any feature reels."

So that, you wrote the General Film Company, asking for feature reels on Thursday nights? A. I don't know whether it shows in that letter, but I made a trip to Pitts-



1 burgh, and took it up with Mr. Kinson, their manager, personally.

Q. And he told you he was unable to supply you with feature films? A. Yes, sir.

Q. On Thursday nights? A. Yes, sir.

Q. And you were convinced that you could not get them from him? A. Yes, sir.

Q. That you couldn't get them from him at all? A. Yes, sir.

Q. And you were still licensed by the Patents Company, were you not? A. Yes, sir.

2 Q. And did you intend to abide by your license, or to get feature films whenever or wherever you could? A. We did up to the time we had the extra films booked.

Q. And when was it that you booked the extra films? A. I think the films were booked from June to August 11th on each Thursday night.

Q. And it was on August 9th you received this (letter)? A. Yes, sir.

Q. Had you been running special features on Thursday nights during the entire month of July? A. Yes, sir; I think so.

3 Q. What kind of projecting machine did you use in your establishment? A. Motiograph machine.

Q. And how long had you been running them at that place? A. Since 20th of December, 1909.

Q. Now, "The Burning of Rome" was a special feature, which you exhibited at your house, was it not? A. Yes, sir.

Q. And that was an unlicensed motion picture? A. Yes, sir.

4 Q. And you ran that on the projecting machine in your house upon which you were paying a royalty? A. Yes, sir.

Q. And "The Coronation of King George and Queen Mary" was a special feature, was it not? A. Yes, sir.

Q. And that was an unlicensed Independent film? A. Yes, sir.

Q. And you ran that upon the licensed projecting machine which you used in your house? A. On the Motiograph machine.

Q. Yes; did that machine when you purchased it have a license plate on it? A. I don't know; I have not been per-

sonally connected with the place. In fact, I know very 1  
little about the picture business.

Q. Did you run a special feature known as "The United  
States Military Tournament" picture sometime in August?  
A. I think possibly I did; I am not certain.

Q. And that was an unlicensed motion picture? A. We  
ran several unlicensed pictures.

---

Thereupon, WILLIAM DEVERY resumed the stand.

By Mr. GROSVENOR: 2

Q. Mr. Devery, you stated to me a moment ago that  
you had returned here, and desired to submit a letter which  
you felt would supplement some of your testimony that  
you gave on redirect examination. Is this the letter? A.  
Yes.

Q. Is that the letter to which you referred on your  
cross examination yesterday, Mr. Devery? A. Yes, sir, it is.

Mr. GROSVENOR: I offer that letter in evidence.

Mr. KINGSLEY: I object to this letter as incom- 3  
petent, immaterial, irrelevant, and as not binding  
upon any of the defendants herein, and as being a  
matter wholly personal between the Imperial Film  
Exchange and its owners, and MacDonald & Bost-  
wick, their attorneys.

**Petitioner's Exhibit No. 202.**

**MACDONALD & BOSTWICK**

Counselors at Law

15 William Street, New York. 4

(Officers listed.)

April 18, 1910

Imperial Film Exchange,  
44 West 28th Street,  
New York, N. Y.

Dear Sirs:

With reference to the situation which necessarily arises

1    between this office and the Imperial Film Exchange, growing out of the cancellation of its licenses by the Motion Picture Patents Company, and in response to your request as to whether or not we will continue as your counsel, we, after careful consideration, have concluded that it will not be possible for us to advise or act for you in any matters which involve your relations with the Patents Company or any of its licensees.

2    Inasmuch as we originally incorporated the Imperial Film Exchange for you and have always been its counsel and inasmuch as during this time, we have had the pleasantest relations with your Mr. Steiner and your Mr. Devery, we regret very much the necessity for coming to this conclusion. However, we know that our position will be thoroughly understood by you when you realize how closely we have been connected with the Motion Picture Patents Company from its inception, as well as the further fact that we are the attorneys for several of its licensees.

Our office and its records are entirely at your disposal for the proper concluding of any matters which you have placed in our hands heretofore.

3

Yours very truly,

Macdonald & Bostwick.

DM/H

Recross examination, by Mr. KINGSLEY:

Q. So, MacDonald & Bostwick had been your attorneys for sometime prior to the date of this letter? A. They were the only attorneys we ever had.

Q. And how long had they been your attorneys? A. From the time of the incorporation of the Imperial Film Exchange in 1908.

Q. And that was prior to the time of the incorporation of the Motion Picture Patents Company, was it not? A. Yes, sir.

Q. Now, did you ever have any controversy with them at any time prior to the date of the severance of your relations, the relations between the Imperial Film Exchange, and them, as counsel? A. In what respect?

Q. In any respect, any material respect? A. We did not.



Q. Had they been your attorneys right along up to April 15th? A. Up to the time of the cancellation. 1

Q. You knew that they were the attorneys for some of the licensed manufacturers, did you not? A. We knew they were the attorneys of the Patents Company and the manufacturers.

Q. Is that the answer you want to make? A. I didn't know they were the attorneys—

Q. Well, now, sir, you have described at some length an interview which you say that Mr. Steiner had with Mr. MacDonald on the morning of April 15th, 1910, on the telephone? A. Yes. 2

Q. You were not at the telephone at all, were you? A. No, sir.

Q. You didn't hear the voice of the person at the other end of the telephone? A. No.

Q. You were informed by someone else, by Mr. Steiner, that it was Mr. MacDonald or Mr. Bostwick? A. I was informed by Mr. Steiner that it was Mr. MacDonald.

Q. And after that conversation you sent or, at least, the Imperial Film Exchange sent a notice to the Motion Picture Patents Company, withdrawing the license? A. Mr. Steiner, I believe, sent any communication that was sent. There was no meeting of the Board, or anything, pertaining to any withdrawal from the Patents Company. 3

Q. You knew the letter was sent, did you? A. I understood it was sent.

Q. How many were in the Board besides yourself and Mr. Steiner? A. One.

Q. Now, you have just referred to a "Board." What board are you referring to? A. I say we did not have any meeting of any Board.

Q. How many members were there of that Board to which you have just referred? A. Three. 4

Q. And who were the members of that Board? A. Mr. Steiner—William Steiner, William Devery, and Otto Steiner.

Q. Four members? A. No, three.

Q. Well, you have just named four there, have you not? A. No, only three.

Q. Then Mr. Steiner knew of the letter? A. Mr. Steiner knew of the letter, yes.

Q. And you knew of the letter? A. I heard of the letter.

1 Q. Didn't you tell us here yesterday that you saw him write it down? A. I saw the letter written?

Q. Yes? A. Or, at least a dictation.

Q. You knew that such a letter was written? A. Yes, I knew such a letter was written.

Q. And you were one of the members of the Board of three? A. I was.

Q. Now, yesterday you wanted to say something in the course of your cross examination relative to MacDonald & Bostwick? A. Yes.

2 Q. And on your redirect examination you did say something characterizing their conduct as lawyers, and to-day you have voluntarily come back here with a letter that you received from them, in which they told you that owing to certain reasons they could not serve you as your attorneys, and by "you" I mean the Imperial Film Exchange. Now, do you want to be understood as charging that MacDonald & Bostwick were really acting for the Motion Picture Patents Company when they advised you to write that letter, and were not acting for the Imperial Film Exchange? A. That is just exactly the way I wanted to have it understood.

3 Q. And that is what you have been trying to put on the record yesterday and to-day? A. Yes, sir.

Q. You want to charge these attorneys with bad faith against the Imperial Film Exchange? A. Yes, sir.

Q. Because they were at one time representing the Patents Company, or for some other reason? A. He states at that time they were representing the Patents Company, and according to the attorneys I have had since they should never have instructed us to do anything without they intended to defend us.

4 Q. And you wish to make that charge on this record? A. Yes, that is just what I wish to say.

Redirect examination by Mr. GROSVENOR:

Q. Mr. Devery, you were present, as I understand your testimony, when Mr. Steiner was writing down the letter which was to be sent to the Patents Company? A. Yes.

Thereupon LOUIS KARSON, a witness subpoenaed on behalf of petitioner, of lawful age, duly sworn, deposed as follows:

Direct examination by Mr. GROSVENOR:

Q. Mr. Karson, in the beginning of 1909 where were you engaged in business? A. 1229 North Seventh Street, Philadelphia, under the name of the Philadelphia Film Exchange.

Q. Was that a company which was engaged in distributing motion picture films to exhibitors? A. Yes, sir; in the renting department of it.

Q. How long had you been in business in Philadelphia? A. In Philadelphia for up to the time the license was removed.

Q. Yes? A. It was at about two and one-half years.

Q. Were you, in the beginning of 1909, a so-called licensed film exchange, that is, licensed by the Motion Picture Patents Company? A. Yes, sir.

Q. Had you, in the year 1908, been a member of the Film Service Association? A. Yes, sir, I had.

Q. After you took out a license from the Patents Company in the early part of 1909, did you to the best of your ability observe the terms and conditions laid down in that exchange agreement? A. Yes, sir.

Q. You may state whether or not your license was cancelled in March, 1909, and if so, please give the date. A. The fifteen.

Q. The fifteenth of March? A. Yes, sir, the fifteen of March, and tomorrow I could get that telegram.

Q. I am not asking you about that. A. All right, then.

Q. Now please state, Mr. Karson, in your own way, the circumstances surrounding this cancellation, how it happened, and what you did to get the cancellation revoked, and what effect it had upon your business, and your ability to get films? A. Well, after that license was cancelled on March 15, 1909, we were after to get some more films, and of course it was impossible to get anywheres films. We could not get one foot of film in the United States for any money. After they cancelled our license we went to the Motion Picture Patents Company, but, of course, we didn't go to them before—

Q. (interrupting): Don't use the word "we" but state



1 what you did, if you did it personally. A. Yes, I did it personally.

Q. And what did you do? A. I went to Mr. Berst, of the Pathe Freres first, of the Pathe Freres Company first.

Mr. KINGSLEY: I object to any account of any interview with Mr. Berst that the witness may give, as not binding on the defendants.

By Mr. GROSVENOR:

2 Q. Mr. Berst, the head of Pathe Freres, and a defendant in this suit? A. Yes, sir, and Mr. Berst gave me the answer he can't do nothing for me, cannot sell me any more goods, and I shall go to the Patents Company, and I say, "Who is the Patents Company?" and he states, "Go over to Mr. Kennedy, or to Mr. Dyer, or the Biograph Company." I went to William Rock, manager of the Vitagraph Company. Of course I used him for a good friend of mine at that time.

3 Q. What did Mr. William Rock say to you when you went to him? A. He said, "I can't do anything for you; you must go to Mr. Kennedy, of the Motion Picture Patents Company."

Q. Did any of these men in these conversations which you have just referred to, state what was the cause of the cancellation of your license? A. No cause whatever; said "We cannot sell you any goods without the Patents Company will give us a permit to sell you."

4 Q. Did you go up to the office of the Patents Company? A. I went to the office of the Motion Picture Patents Company, before you know they told me Mr. Dyer,—the Biograph Company did, and they send me over to 80 Fifth Avenue, that I should go to the office of the Patents Company, and I went to the Patents Company, and I asked for Mr. Dyer, and Mr. MacDonald showed up, and he said, "Here, you want to see Mr. Dyer?" and I said, "Like to speak to Mr. Dyer," and then he said, "Sit down," and then—

Q. Is this Dwight MacDonald? A. MacDonald, yes, and Mr. Dyer he comes in, "What you wish?" and I said, "I would like to find what the reason why you people stopped off selling me goods," and "Mr. MacDonald will give you

all information that would be necessary. Mr. MacDonald 1  
will give you all the information."

Q. That was Mr. Dyer's answer to you? A. Yes, sir,  
and Mr. MacDonald he comes around in some time, and  
say, "What I can do for you?" and I said, "Like to find  
out what reason why you not sell me any goods," and he  
said, "No reason whatever; we are not compelled to give  
you any reason," and "We don't like you," and "We will  
not sell you any goods," and that was the answer of Mr.  
MacDonald.

Q. Did you stay there, or do anything further in order 2  
to get films? A. I did stay there, and I said, "I can't get  
away from this office if you people will not sell me any  
goods. I really feel that I will not be able to make a liv-  
ing, and will get ruined," and they said, "We don't care  
for you, and don't listen to you," and "If you don't get  
away from this office we will call an officer and throw you  
out."

Q. Now, Mr. Karson, had you been doing a successful  
and profitable business in the City of Philadelphia up to  
the date of the cancellation of your license?

Mr. KINGSLEY: Objected to as leading and sug- 3  
gestive, and as in effect telling the witness what he  
is to say.

The Witness: Positively I was successful, which I could  
prove it by all the City of Philadelphia. I made my twenty-  
six or twenty-seven thousand dollars in two years' time,  
which I bought property, and I have money on the bank  
which my bank would prove it; real capital.

By Mr. GROSVENOR: 4

Q. Up to the date of your cancellation had you paid  
all your bills promptly to the so-called licensed manufac-  
turers? A. Positively. In fact, I have a reference from  
Pathe Freres today I was the best customer, and a payable  
proposition.

Q. From what manufacturers had you obtained films in  
1908 and 1909, up to the time of the cancellation of your  
license? A. Why, we used to buy of Lubin; I used to buy  
it of Vitagraph, and of Pathe Freres, and Edison, and

- 1 Selig—this was the main. We used to buy every week one or two characters of every subject which they used to release, and then we used to buy sometimes of Essanay, too, but not often.

Q. You may state whether or not Mr. Lubin, the man named by you, was interested in any rental exchange doing business at this time in Philadelphia in competition with your exchange? A. Yes, sir.

Q. What was the name of that exchange? A. Lubin Film Exchange.

- 2 Mr. KINGSLEY: Objected to as incompetent, immaterial and irrelevant, and as not binding on the defendants herein.

By Mr. GROSVENOR:

- Q. What effect, if any, did this cancellation of your license and this refusal to distribute to you films, to which you have testified, have upon your business? A. Well, that is positive it ruined me after the moment which I left, as a beggar, I am not ashamed to say, because I was trying anything in God's world, and gets goods from the European, and I did get between nine and ten hundred dollars every week, which them goods was not worth a cent. We used to buy from Murdock, in Chicago, our goods, and this was lasting about six or seven months on a straight we have lost between twelve hundred and thirteen hundred every week, and so far that as I got disgusted, and I gave way business which is seventy-five thousand dollars' worth the time before they cancelled for one thousand dollars, and after I take the thousand dollars, of course, I went into another business, and I lost it, every cent I have, and up to this moment I believe I cannot
- 3
- 4 make a living just on account of that any way I can— At the present time I am trying to make a living off of feature films, to combine one feature, or two, or three, and distributes them, and as some exhibitors to the theatre—

Mr. KINGSLEY: I object to the witness going any further. He seems to have already answered the questions asked him.



By Mr. GROSVENOR:

1

Q. Now, Mr. Karson, you gave up this rental business then? A. Yes, sir.

Q. In what business are you now engaged? A. In the feature business, in the same business running features.

Q. And by "features" you mean a film of one, or two, or three, or four reels in length? A. Yes, sir.

Q. Which is not a regular reel? A. No.

Q. But is a special feature, so-called? A. Yes, sir.

Q. And do you import some of these? A. I am trying to exhibit them in theatres.

2

Q. Now, please state what difficulties you have encountered in distributing these special features to the theatres in this country? A. Well, that is what I wanted to state—

Q. (interrupting): And particularly to the licensed exhibitors. A. That is what I want to state.

Q. All right. A. Any time I come in a theatre where they are running General Film Company's goods, that is what we call them, and when I comes to a certain exhibitor, and I offers him my feature, and they simply answers me, "Why, we cannot use your service because we are afraid they will cancel our license; we can't take a chance on by one feature."

3

Mr. KINGSLEY: I object to all this talk as being remote, vague, and indefinite. If the witness has anything to say of a definite nature just let him state it.

By Mr. GROSVENOR:

Q. Now, please continue with the description of the difficulties you encountered? A. The difficulties I give you are on account of at any time I come to the exhibitor to distribute special films they refuse to take it at all of me because the Motion Picture Patents Company don't allow him to run licensed goods with the independent together. As soon as they give him an independent subject, and the Motion Picture Patents Company finds out, they cancel their license, and this is the reason that the exhibitors gives you for not being able to put on any another picture except licensed pictures.

4

Q. State whether or not the larger theatres in Philadelphia are so-called licensed theatres? A. I guess the licensed theatres are about seventy-five per cent.

Q. In Philadelphia? A. In Philadelphia.

1 Q. About 75 per cent.? A. Yes, and of course you can't go to offer them anything because they are running licensed goods.

Q. Was one of the special features which you have had "The Life of Dante?" A. Yes, sir.

Q. How many reels was that? A. Why, it had three reels.

Q. What sort of a film subject was that? A. Why, it was part of educational, pretty near all the subject educational for a school children and so on.

2 Q. Now, Mr. Karson, have you made any effort to get back in the rental exchange business since your cancellation? A. No, sir.

3 Q. Did you see any of the licensed manufacturers in 1910 to ascertain whether you could get a license? A. Yes, sure, in 1910, I went to William Rock—I went to the Vitagraph, and I came over there, and I explained to them my circumstances, and I told them, "I have friends to help me out, and to give me a few thousand dollars if I shall go into the business again; they will give me something if I go in the same business. If it is possible for you to sell me any goods anywhere at all, I don't care, I will move out to South Carolina, or North Carolina, and I will leave Philadelphia, if it is possible for you to sell me goods away from there because"—

Mr. KINGSLEY: I object to what reasons may have actuated the witness in his actions.

Mr. GROSVENOR: Go ahead.

The Witness (continuing answer): I thought that they wouldn't sell me goods in Philadelphia—

4 Mr. KINGSLEY: I object to the witness's statement as incompetent, immaterial, irrelevant and simply an attempt to pad the record.

By Mr. GROSVENOR:

Q. Go on, what else? A. When I told them, "I am satisfied to leave Philadelphia, and go away in the South, or in the West, anywhere it is possible I shall be able to buy their films, and I am sure I could make a living if you people will sell me," and they said, "Can't do anything for you, you must

go to the Patents Company," and I never went to the Patents Company. 1

Q. Was this Mr. Rock the Mr. Rock connected with the Vitagraph? A. Yes, sir.

Q. Which is one of the licensed manufacturers? A. Yes, sir.

Cross examination by Mr. KINGSLEY:

Q. When were you cancelled? A. In March, 1909, on the 15th.

Q. Did you get a letter at that time? A. We got a letter about three days before the telegram. 2

Q. Where is the letter? A. Why, the letter, I don't know. After I left the business, of course I left it in Mr. Michael Lessy's hands. He took everything.

Q. When did you last see the letter? A. I did not see the letter since 1909, on October 20th or 25th.

Q. Where is the telegram? A. The telegram is—Mr. Michael Lessy has got it. He will be here tomorrow.

Q. Did you have any standing orders with the manufacturers at the time you were cancelled? A. Yes, sir.

Q. With what manufacturers did you have standing orders? A. With Pathe Freres, Berst, with the Edison, with the Biograph, with the Vitagraph, with Selig. That was standing orders. Standing orders we must accept as much as they release every week. That was the standing order. 3

Q. Did you have those standing orders at the time of your cancellation? A. What do you mean?

Q. At the time you got the letter and the telegram? A. Why, sure we did.

Q. You were taking all that these manufacturers released? A. Yes, sir. 4

Q. How much was your service costing you at that time a week? A. Between ten and thirteen or fourteen hundred dollars a week.

Q. When was it that you had this special feature, "Life of Dante"? A. This winter. On January 30th, I guess. On January 26th or 27th. I cannot give you exactly the date.

Q. Is that the only one you had this winter? A. No, I had a few more.



- 1 Q. How many special features did you have this last winter altogether? A. Altogether I had about sixteen.
- Q. What were the names of them besides the "Life of Dante"? A. "Knights of Rhodes."
- Q. What other ones? A. "The Human Target."
- Q. What else? A. "The Black Veils."
- Q. What else? A. "Satan."
- Q. What else? Name them right along. A. "Love Among the Lions," "Maritza," "Between Life and Death," "Romance of a Heart." I cannot remember exactly them all.
- 2 Q. But that is a few of those you have had? A. Sure; I have had more.
- Q. Within how long a time? A. Between October, 1912, up to today.
- Q. And up to today? A. Yes.
- Q. And that is only a part of those that you have handled? A. Yes, I have a few more.
- Q. Did you have "The Girl from Maxim's"? A. No.
- Q. Did you have the "Theft of the Secret Service Code" in your list? A. No.
- 3 Q. Did you have more than one copy of each of these special features? A. No; only one copy of them.
- Q. And where have you been buying these films? A. Ambrosio American Film Company.
- Q. Did you have a running account with them? A. No, I used to pay them cash.
- Q. Are you still in the special feature business? A. Yes, sir.
- Q. Renting to independent houses? A. Yes.
- Q. Where is your place of business now? A. 1204 Race Street.
- 4 Q. Philadelphia? A. Yes.
- Q. And where were you located in 1909? A. 1909, we were located at 1229 North 7th Street. Then we moved over to 14 North 9th Street.
- Q. You have stayed in the film business ever since, haven't you? A. No, I went out. After I got down and out, which I could not move myself, I went in another business, and I could not make a living in the other business, and I went back in this business.
- Q. When did you go back in the film business? A. I went back in the film business in 1911.

Q. What time in 1911? A. In August. 1

Q. August, 1911? A. Yes.

Q. And you have been in the business, then, nearly two years this coming August? A. Yes.

Q. All the time handling independent picture films? A. Yes, sir.

Q. And displaying them in independent houses? A. In independent houses.

Q. And you are in business today? A. Yes.

Q. How many exhibitors were you serving at the time that your license was revoked? A. This is a hard question to tell you exactly in a minute. Between 50 and 70. Something like that anyhow. 2

Q. Did you make a report each week to the Patents Company of the exhibitors you were serving? A. Yes. After we signed that contract, we must do that.

Q. Well, did you do it? A. Yes, we did.

Q. And did you make a correct list? A. We did make a correct list.

Q. Who made this list? You yourself? A. No, my book-keeper made the list or my partner used to attend at that time to the list. 3

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J. HENKEL HENRY, a witness subpoenaed on behalf of the petitioner, being first duly sworn by the Examiner, testified as follows:

Direct examination by Mr. GROSVENOR:

Q. Mr. Henry, where do you live? A. Winchester, Virginia.

Q. Do you own a theatre, or have you an interest in a theatre which displays motion pictures, in Winchester, Virginia? A. We had up to recently, when we were burned out, and now we are rebuilding. 4

Q. In the year 1912, and the early part of 1913, you did have such a theatre? A. Yes, sir.

Q. Please look at the two letters which I show you, dated February 8th, 1912, signed by the General Film Company; and March 28th, 1913, signed by the same company, addressed to you, and state whether those are two letters re-

1 ceived by you about the dates indicated on the letters (handing papers to witness)? A. (witness examining papers): Yes, sir.

Mr. GROSVENOR: I offer those in evidence.

The papers identified by the witness are marked, respectively, Petitioner's Exhibit No. 203 and Petitioner's Exhibit No. 204, and are as follows:

**Petitioner's Exhibit No. 203.**

2 **GENERAL FILM COMPANY**

Bank of Commerce Building

7th and E Streets N. W.

Washington, D. C., Feb. 8th, 1912.

Mr. J. H. Henry,  
Empire Theatre,  
Winchester, Va.

3 Dear Sir:—

We have just been advised by the Patents Company that your license sometime ago had been cancelled, therefore we will be unable to supply you after Feb. 10th, unless you make some satisfactory arrangements with the Patents Company for the restoration of your license. They have advised that if six months royalty was paid in advance they would restore your license. Kindly take this matter up with the Patents Company immediately, as according to their instructions we will discontinue shipments to you after Feb. 10th.

4 Yours very truly,  
GENERAL FILM COMPANY,  
H. J. Cohen, Branch Manager.

HJC/B



**Petitioner's Exhibit No. 204.**

1

**GENERAL FILM COMPANY**

Bank of Commerce Building

7th and E Streets N. W.

Washington, D. C., March 28, 1913.

Mr. Henkel Henry,  
Winchester, Va.

Dear Sirs:—

2

Replying to yours of March 22nd, we beg to say that as your license has been cancelled by the Motion Picture Patents Company, we will be unable to serve you unless they reinstate you. We would advise you taking this matter up with them direct.

Yours very truly,  
GENERAL FILM COMPANY  
S. J. Mayer,

SJM/EMG

Branch Manager. 3

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By Mr. GROSVENOR:

Q. Refreshing your recollection by an examination of Petitioner's Exhibit No. 203, you may state whether your theatre, the Empire Theatre, was receiving so-called licensed service in February, 1912? A. Yes.

Q. You were obtaining your films from the General Film Company, located at Washington, D. C.? A. Yes, sir.

Q. Were the films shipped from Washington to you? A. No, sir; from Harrisburg, Virginia, or from the circuit out from the Washington branch.

4

Q. This letter states: "We have just been advised by the Patents Company that your license some time ago had been cancelled, therefore we will be unable to supply you after February 10th, unless you make some satisfactory arrangements with the Patents Company for the restoration of your license." Do you recall whether you had or had not received any such notice of cancellation from the Patents Company?

1 A. No, sir; I had not, and I never did anything to give them occasion to cancel me.

Q. And so you had not received, so far as you recall, any notices? A. No, sir. I never abused any of the rights that would warrant their sending me such a notice.

Q. After the receipt of this letter stating that they will be unable to supply you after February 10th, did you receive any films from the licensed manufacturers? A. No, sir.

2 Q. Now, I show you the other letter, being Petitioner's Exhibit No. 204, dated March 28th, 1913. Will you state whether you had made application to the General Film Company for some of the licensed film at or about the time stated on that letter (handing paper to witness)? A. (witness examining paper) : Yes, sir.

Q. You may state whether you were or were not able to get film from the General Film Company in March, 1913? A. They refused me. Even though I agreed to split the service with my competitor. I think one of the chief objects in cancelling me was because I was running a little ahead of him.

3 Mr. KINGSLEY: I object to what he thought, and I move to strike it out.

Cross examination by Mr. KINGSLEY:

Q. At what times were you a licensee of the Patents Company? A. At intervals of about possibly eight months apart throughout a course of two years.

Q. For how long a time on each occasion were you a licensee? A. My longest period, I presume, was nine months. I might add that was prior to the organization of the General Film Company.

4 Q. From whom did you get service at that time? A. From the Pittsburgh Calcium Light Company.

Q. And where was that delivered to you? A. At Winchester, Virginia.

Q. Where was it you got it? From what exchange? A. Wilkes-Barre, Pennsylvania, branch.

Q. When were you first a licensee of the Patents Company? A. About in 1910, I would imagine. I would not say positively.

Q. Was it in November of 1910? A. I think it was.

Q. At that time were you getting service from Baltimore? 1  
A. From Baltimore. Pearce & Scheck.

Q. How long did you remain a licensee at that time? A.  
For a period of two weeks.

Q. And then did you voluntarily relinquish your license?  
A. Yes, sir; because they did not live up to their—

Q. (interrupting): When was the next time that you became a licensee of the Patents Company? A. Through Mr. Tom Moore, about six months later.

Q. About July of 1911? A. Correct.

Q. And how long did you remain a licensee at that time? 2  
A. Two weeks again.

Q. And where did you get your films on that occasion?  
A. From Mr. Cohen, I think; whoever was the head of the Washington branch.

Q. You got them from Washington this time? A. Yes.

Q. And you voluntarily relinquished your license at the end of two weeks? A. Yes, sir.

Q. Then later on, in December, you became a licensee again? A. That is right.

Q. And how long did you remain a licensee in December, 1911? A. One or two weeks.

Q. At that time you were doing business with independent films, were you not, in December, 1912? A. Yes, sir; only between the times of the trust use. At no time did I run an independent reel while exhibiting the licensed service. 3

Q. During these times while you were a licensee, did you get any special features? A. No, sir; only the Delhi Durbar, which I got from my exchange, the Washington branch.

Q. During that time, did you get any licensed special features? A. Yes.

Q. And this was the Delhi Durbar? A. Yes. But it was a poor feature.

Q. And when did you get that? During one of the weeks you were a licensee? A. The last week. And that occasioned my cancelling them. Because I had a grievance against them, and I quit. 4

Q. That was in December, 1912? A. No, that was in February, wasn't it? The last time that I ran it. That was in February.

Q. February, 1912? A. Yes.

Q. And at that time you had the Durbar? A. Yes, sir.



1 Q. And then you cancelled your license because you did not like your special feature? A. Well, I found my patrons did not like the association stuff as well as independent service. My patrons did not like it as well.

Q. You found your patrons liked the independent service better? A. My patrons were educated to the independent service.

Q. You had educated them to the independent service? A. Yes, sir. I found I was not bettering my condition by exchanging for this service.

2 Q. Are you the manager of this theatre? A. I was the manager and proprietor at that time.

Q. And were you in direct personal charge of it? A. Yes, sir.

Q. So you knew all that was going on? A. Yes, sir.

Q. You put out the advertising, did you? A. Yes, sir.

Q. And made up the copy for the advertising? A. Yes, sir. Chief cook and bottle washer.

Q. I show you an advertisement purporting to describe an "attractive program at the Empire Theatre for the week of February 12th" (handing paper to witness). A. (witness examining paper): That is right.

3 Q. What year is that? A. February 12th, 1912.

Q. Is that your advertisement (indicating)? A. That is my advertisement, sir.

Q. And you put it out yourself, did you not? A. I put it out myself.

Mr. KINGSLEY: I offer it in evidence.

The paper identified is marked Defendant's Exhibit 29, and is as follows:

**Defendants' Exhibit No. 29.**

1

**EMPIRE THEATRE**

Week of Feb. 12th

To-Night's Pictures:

4 REELS TONIGHT

Unwelcome Santa Claus—Rex

The Portrait—Imp

Speculation—Lubin

Night Rustlers—western

7 REELS WED NITE

Thurs. Fri and Sat.

2

**RURAL PLAYLETT**

Clarence Marks, late comedian

with Geo. Evans' "Honey Boy"

Minstrels, assisted by Ruth

Marks, in a comedy rural play-

let—"Tommy's Visit."

ADM. 5 CENTS

Straight Every Night Except Saturday

3

The Witness: I ran an exclusive independent service there, but there was a typographical error on the part of the printer, inserting the word "Lubin."

By Mr. KINGSLEY:

Q. Did you read the proof yourself? A. No, sir, when we inserted the advertisement, we did not read the proof. I might state that my competitor's licensed house ran independent service, and I furnished the evidence to the Patents Company.

4

Q. You complained to the Patents Company of your competitor? A. I first asked them whether it was possible for me to run it, and they denied me the privilege, and I wrote to them about his using it, and they evidently took it up with him, and thanked me kindly; and they chastised him, I believe. He learned of the fact that I had complained to them.

Q. You have got here an advertisement of four reels: "Tonight: Unwelcome Santa Clause, Rex; The Portrait, Imp; Speculation, Lubin; and Night Rustlers, Western?" A. The

- 1 manufacturer would dissect that, and see that that was not an association picture. It is an independent picture.

Mr. GROSVENOR: You mean "Speculation?"

The Witness: Where "Lubin" occurs there.

Mr. GROSVENOR: "Lubin" occurs on the advertisement after the title "Speculation." Was that an independent film?

- 2 The Witness: Yes.

By Mr. KINGSLEY:

Q. You were on one week in January and one week in February of 1912? A. No. Only one period in 1912. Part of that was in the Fall of 1911. October or November. December possibly. Late in the Fall.

Q. December, one week? A. Two weeks.

- Q. And two weeks in January and February of 1912? A. The latter part of January and the first part of February.  
3 One week of each. You see, my service was cancelled on the 10th. I got no service on the 10th, which kills that advertisement dated the 12th, proving that I did not have any association pictures on the 12th, because my service was discontinued on the 10th.

Q. When was this paper published? A. On the 12th day of February, 1912. That letter is dated the 8th, which shows that I was not to get any service after the 10th. Two days later this advertisement appeared, and the printers made the error of inserting the name "Lubin" after the independent release.

- 4 Q. When was it that you stopped the licensed service because you did not like the special feature film? A. On this occasion.

Q. What occasion was this? A. This last time. February 10th, the last time. Now, if you will grant me an opportunity I will explain.

Q. Then the purport of your testimony is that you quit, that you were not cancelled? A. No, the situation was, if you will grant me, my competitor told me that he stood so strong with the Association, that he was going to have my



service discontinued, and, coming to me so plain and so directly, why, on the 8th or 9th of February, 1912, I notified them by reason of the fact that the Delhi Durbar was not up to what they represented it to be and again that my patrons did not like the Association pictures or the licensed pictures warranting my continuing them, I would discontinue their service. 1

Q. You wrote such a letter to the Motion Picture Patents Company? A. To the Motion Picture Patents Company. They crossed me with that letter.

Q. Dated February 8th, 1912? A. February 8th, 1912. The same date of that letter. I was crossed in transit. 2

Q. Did you give that letter to Mr. Grosvenor? A. Yes, sir. You see, it came to me so plainly that they were going to cancel me, I did not want them to have the privilege of cancelling me. I wanted to stay in good standing so that I could always go back to the licensed pictures. And the letters crossed.

Q. Did you cease the licensed service because you were afraid you would be cancelled, or because you did not like the special feature film, the Delhi Durbar? A. The fact of the matter was I felt I knew I was going to be cancelled. Because the other fellow had two houses and I had one, and naturally, as a business proposition, they would drop me. 3

Q. What was that last? A. I said, the other fellow who had complained to them about it had told me he was going to have me cancelled, he had two houses with the prospects of a third house, his influence would be stronger than mine, a little fellow with one house. And it came so strong to me that I did not want to give them the privilege of cancelling me, and I very kindly wrote to them that I did not want the service after that week, and our letters crossed.

Q. How large a place is Winchester? A. Six thousand. 4

Q. Were these four houses in Winchester? A. No, sir, not at that time.

Q. Did your competitor have two houses in Winchester? A. He had one in Martinsburg, 22 miles away, and one in Winchester, and a couple of months after, he was to open the Stanton House, having three houses as against my one.

Q. Of course you wanted to display independent films because they would be different from what your competitor would display at his licensed house? A. No, the patrons of the town—he had the bigger house, the better house, and

1 was the strongest man. I was the weaker one of the two, and I wanted to give the people what the majority wanted, and I felt if it would build my business up by running association stuff, I would try it, but I found it did not take with them any stronger than I had been regularly, and again I felt that I was going to be cancelled, and I wrote them that I did not want the service any longer. That my patrons liked the independent service.

Q. To whom did you write this letter which you gave to Mr. Grosvenor, withdrawing? The letter of February 8th, 1912? A. The letter of discontinuance?

2 Q. Yes. A. I wrote to the General Film Exchange. Mr. Cohen, I believe, of Washington.

Mr. KINGSLEY: Will you let me see that letter, Mr. Grosvenor?

The letter is produced.

Mr. KINGSLEY: I offer it in evidence.

The paper produced is marked Defendants' Exhibit 30, and is as follows:

3 **Defendants' Exhibit No. 30.**

Feb. 8/12

General Film Ex.,  
Washington, D. C.,

Gentlemen:—

I have yours of even date and note your refusal to make an allowance on the Delhi Durbar reel. I enclose you check covering the balance due you in full for service from you up to and including February tenth. At present you will  
4 discontinue sending me the service from Mr. Wine. That is after the tenth.

While I haven't any kick on the service yet I prefer a regular program each week of a certain age so that I can look forward and see just what I am to get. Again my patrons had been trained to the Independent reels and seem to prefer them, rather than learn the new service that is in familiarizing themselves with the players.

Again thanking you for your courtesy and attention dur-

ing our brief business relations and with kindest regards, I am 1

Yours, etc.,

P. S.—Remember I will continue using the service for the remainder of the week. You will accordingly instruct Mr. Wine to express his Saturday night Show to you, but let the Friday night show come on to me. Trusting that this is giving you ample time to straighten matters out and that same will not inconvenience you in the least. This will cancel the “Cinderella” feature which you had booked for me on the 14th inst. Although if not against your rules I could use it. In this event I would want you to advise me at once so that I can get out proper advertising for same. 2

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By Mr. KINGSLEY:

Q. This letter which I show you, marked Defendants’ Exhibit 30, dated February 8th, 1912, is a copy of a letter which you sent to the General Film Company at Washington, D. C., on that date, is it not? A. Yes, sir. 3

Q. The original letter was signed by you, was it not? A. Signed by me.

Q. You say that you never received the letter cancelling your license from the Patents Company? A. Not until after I wrote this letter. Both the same date.

Q. Then as a matter of fact, after you had been granted a license three times to use a projecting machine, you abandoned your license and used the machine without a license? A. Yes, sir; because I so understood it from the Association. The general officers. That that was my privilege. But so long as I was running their pictures, that I would not run independent pictures, which I never did. But a man, as I understand it, had the privilege to run and change every week if he so prefers. 4

Q. What type of machine do you use? A. Standard American.

Q. Any special type or number? A. I think it was No. 3 or No. 4. I ran at the last a No. 4. I had two or three machines in the course of my two or three years’ operation.



1 Redirect examination by Mr. GROSVENOR:

Q. Mr. Henry, was there any fuller explanation you desired to make in connection with any of these subjects which you have talked about on cross examination? A. No. That I felt a grievance, and they were not granting me the privilege to run an independent feature, whereas my competitor did exhibit an independent feature and films, the advertisements of which I supplied to the Patents Company.

2 Q. And his license was not cancelled when the matter was brought to their attention? A. The matter was brought to their attention, and he continued to operate, and he was not cancelled. I never heard of him even being fined.

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REUBEN SOLZ, a witness subpoenaed on behalf of the petitioner, being first duly sworn by the Examiner, testified as follows:

Direct examination by Mr. GROSVENOR:

3 Q. Where do you live? A. 1215 Fifth Avenue, Pittsburgh, Pennsylvania.

Q. Mr. Solz, are you interested in a moving picture theatre in Pittsburgh, Pennsylvania? A. Yes, sir.

Q. What is the name of that theatre? A. Majestic Theatre.

Q. Did you at any time exhibit in your theatre so-called licensed films? A. Yes, sir.

4 Q. Did you ever have any trouble with the Motion Picture Patents Company in connection with the exhibition of other films in your theatre? A. Yes, sir.

Q. Please state in your own way how that matter arose, and what you did, and whom you saw in connection therewith? A. From 1908, when I first started, I run all the association pictures. I never had any trouble until 1912, until I ran in what they call an independent picture. They cancelled my license.

Q. Had you exhibited any pictures except the so-called license or trust pictures up to the Fall of 1912? A. Not that I remember of.

Q. And then you say your license was cancelled, is that right? A. After I ran in an independent picture. 1

Q. Did you or not come to New York with your lawyer to see anybody at the Patents Company offices in connection with the cancellation of the license of your theatre? A. Yes.

Q. About what time did you come over? A. It was the end of December, 1912. Along there.

Q. Whom did you see at the Patents Company office on this subject? A. I believe a gentleman by the name of Braden.

Q. Do you see him in the room here? A. Yes, sir. That gentleman over there (indicating Mr. Braden). 2

Q. Please state what was said at the offices of the Patents Company on the subject of the cancellation of your license? A. They objected to my running any independent pictures and on that reason they cancelled my license.

Q. Did you ask whether the cancellation could not be revoked? A. I did.

Q. And what was said, if anything? A. If I signed a contract that I will not run any others but association pictures, licensed pictures. 3

Q. That if you signed a contract on those terms, you could get a new license? A. I would be reinstated again with a new license.

Q. Did you sign any such paper? A. I did; I had to.

Mr. KINGSLEY: I object to that as a conclusion of the witness, and I move to strike it out.

By Mr. GROSVENOR:

Q. Since then what pictures have you handled? A. I am handling the licensed now. 4

Q. Are the larger theatres in Pittsburg licensed or independent theatres? A. The very big ones—I don't know what they are running. Sometimes they are running independent, sometimes the licensed. I don't know about the small ones.

Cross examination, by Mr. KINGSLEY:

Q. When did you take out a license with the Patents

1 Company? A. When did I? Just when they came into existence.

Q. Early in 1909? A. Somewhere along that time.

Q. You never had any complaint until October of 1912, did you? A. I did not complain; no.

Q. Did anyone complain of you? A. I got complaints about putting in a different picture than the licensed.

Q. In 1909? A. In 1912.

Q. But in 1909, you received your licensed pictures day by day, and showed them to the public, did you not? A. Yes, sir.

2 Q. In 1910, you received your licensed pictures day by day and showed them to the public without any trouble? A. Yes, sir.

Q. What kind of a projecting machine do you use in your theatre? A. At that time?

Q. In 1909, what kind of a projecting machine did you use? A. Powers.

Q. And what did you use in 1910? A. Powers.

Q. And in 1912? A. Powers.

Q. And what are you using now? A. Powers.

3 Q. Now, what number of Powers did you use in 1912? A. No. 5.

Q. Some time in October you showed in your theatre a special film entitled "Kid McCoy's Great Jewel Robbery," didn't you? A. Yes, sir.

Q. And later on in October you showed a motion picture entitled "Regeneration"? A. That is right; yes.

Q. And in November of the same year you ran an independent picture, entitled, "Blanche Walsh in Resurrection," did you not? A. Yes, sir.

4 Q. And you ran another independent picture entitled "Dublin Dan"? A. That is right.

Q. And you ran another one entitled, "Lieutenant Petrosino," did you not? A. Yes, sir.

Q. Those were independent pictures? A. Independent pictures. Features what they call, I guess.

Q. Early in November of 1912 did you receive a letter, a copy of which I show you? A. Yes, sir.

Mr. KINGSLEY: I offer in evidence the original.

The paper produced is marked in evidence Defendants' Exhibit No. 31, and is as follows:



**Defendants' Exhibit No. 31.**

1

## MOTION PICTURE PATENTS COMPANY

80 Fifth Avenue, New York

November 6th, 1912.

Mr. R. Solz,  
Majestic Theatre,  
1215 Fifth Avenue,  
Pittsburg, Pa.

2

Dear Sir:

Subject: Cancellation of License.

The only motion pictures licensed for use on projecting machines licensed by this Company, are motion pictures licensed by this Company. The pictures manufactured by any of the manufacturers mentioned on the enclosed list and obtained from a film exchange licensed by this Company are licensed for use on projecting machines licensed by this Company.

If you will supply us with a written agreement to hereafter use or permit to be used on your projecting machine, so long as you remain a licensee of this Company, only motion pictures licensed by this Company, we will not cancel your license.

3

Yours truly,  
MOTION PICTURE PATENTS COMPANY.  
By J B

JB/ACL.  
E 5510—E

4

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By Mr. KINGSLEY:

Q. When was it that you received the notice of cancellation? A. I have got the exact date stated here on a letter. It was on a Saturday morning that I received it; November 21st, 1912.

Q. I show you a letter dated November 21st, 1912, signed "Motion Picture Patents Company, by J. B." Is

1 that the letter notifying you of the termination of your license? A. Yes, sir.

Mr. KINGSLEY: I offer it in evidence.

The paper offered is marked Defendants' Exhibit No. 32, and is as follows:

**Defendants' Exhibit No. 32.**

MOTION PICTURE PATENTS COMPANY

2 80 Fifth Avenue, New York

November 21st, 1912.

Mr. R. Solz,  
Majestic Theatre,  
1215—5th Avenue,  
Pittsburgh, Pa.

Dear Sir:

3 We hereby notify you that we withdraw the offer contained in our letter of November 6th, and we are cancelling your license for exhibiting unlicensed motion pictures.

Yours truly,  
MOTION PICTURE PATENTS COMPANY.  
By J B

JB/ACL.  
E 5510—E

4 By Mr. KINGSLEY:

Q. Now, Mr. Solz, when you came to New York and had a conversation with the representatives of the Motion Picture Patents Company, they told you that so long as you observed the conditions of your agreement with them, you could continue to receive licensed pictures, did they not? A. Mr. Braden told me the only way I can obtain the license is by signing the agreement, which I have signed.

Q. Did you consult your attorney before you signed the agreement? A. I did.

Q. Is this the agreement which you signed? A. Yes, 1  
sir, that is the agreement.

Mr. KINGSLEY: I offer it in evidence.

The paper offered is marked Defendants' Exhibit  
No. 33, and is as follows:

**Defendants' Exhibit No. 33.**

**MOTION PICTURE PATENTS COMPANY.**

80 Fifth Avenue, New York.

2

December 31st, 1912.

In consideration of the Motion Picture Patents Company  
granting me a license to use a projecting machine in the  
Majestic Theatre, 1215 Fifth Avenue, Pittsburgh, Pa., I  
hereby agree that so long as I remain a licensee of the Motion  
Picture Patents Company, I will use or permit to be used on  
my projecting machine, only motion pictures licensed by the  
Motion Picture Patents Company.

R. Solz.

3

File, J. B.

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By Mr. KINGSLEY:

Q. Since you signed that agreement you have been re-  
ceiving licensed motion pictures, have you not? A. Yes,  
sir.

Q. And you are showing them to audiences in Pitts-  
burgh? A. Yes, sir.

4

Redirect examination, by Mr. GROSVENOR:

Q. Before you went down to New York, Mr. Solz, did  
you have any conversation with any of the officers of the  
General Film Company at Pittsburgh on this general sub-  
ject of furnishing licensed films?

A. Yes, sir.

Q. Please state who the officer was, or the employe  
was, and what the conversation was.



1           Mr. KINGSLEY: Objected to as not properly re-direct examination.

A. I have seen Mr. Nichols, representing the branch in Pittsburgh, and he told me that he cannot give me any films until I get reinstated my license by the main office in New York. That is, the Motion Picture Patents Company.

Q. Mr. Nichols was the local manager of the General Film Company at Pittsburgh? A. At Pittsburgh.

2           Q. You have not answered my question. Was he or not the local manager at Pittsburgh of the General Film Company? A. Yes, sir.

Whereupon, at 4.15 P. M. on this 9th day of July, 1913, the hearing is adjourned until 10.30 A. M., Thursday, July 10th, 1913, at Room 47, Post Office Building, New York City.

3

4

IN THE  
DISTRICT COURT OF THE UNITED STATES  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

UNITED STATES OF AMERICA, Petitioner,	No. 889.	1
<i>v.</i>		
MOTION PICTURE PATENTS CO., and others, Defendants.	Sept. Sess., 1912	2

New York City, July 10th, 1913.

The hearing was resumed pursuant to adjournment at 10:30 o'clock A. M. on this July 10th, 1913.

Present on behalf of the Petitioner, Hon. EDWIN P. GROSVENOR, Special Assistant to the Attorney General.

JOSEPH R. DARLING, Esq., Special Agent.

Present also, Messrs. CHARLES F. KINGSLEY, GEORGE R. WILLIS and FRED R. WILLIAMS, appearing for Motion Picture Patents Company, Biograph Company, Jeremiah J. Kennedy, Harry N. Marvin, and Armat Moving Picture Company.

Mr. J. H. CALDWELL, appearing for William Pelzer, General Film Company, Thomas A. Edison, Inc., Kalem Company, Inc., Melies Manufacturing Company, Pathe Freres, Frank L. Dyer, Samuel Long, J. A. Berst and Gaston Melies.

Mr. HENRY MELVILLE, attorney for George Kleine, Essanay Film Manufacturing Company, Selig Polyscope, George K. Spoor and W. N. Selig.

Mr. JAMES J. ALLEN, appearing for Vitagraph Company of America, and Albert E. Smith.

The Examiner: I have received from Mr. Swaab the pamphlet, or book, which Mr. Kingsley requested that he send

- 1 over to the hearing. I find that this book, or pamphlet, has not been offered in evidence.

Mr. KINGSLEY: No, it is marked for identification.

Thereupon HECTOR J. STREYCKMANS resumed the stand.

Cross examination by Mr. KINGSLEY:

- Q. What was your business in the early part of 1909, January and February of that year? A. Well, it was advertising at that time. In January I began the organization of a company, called "International Projecting and Producing Company." I was with the Show World, and I did not resign from the Show World until the latter part of January.

Q. What did you call it? A. International Projecting and Producing Company.

Q. What was the International Projecting and Producing Company? A. The International Projecting & Producing Company was a company organized for the purpose of importing European films, and selling them in this country.

- Q. And this, of course, was a company which did not deal in licensed motion pictures? A. No, sir, did not deal in licensed films.

Q. Were you an officer of that company? A. I was the secretary and manager.

Q. At what time did your company begin active business? A. As fast as we could get films over here from the other side.

Q. And how soon was that after the first of January, 1909? A. I got my contracts in January, and in the first part of February, and I made the first release on March 22nd, if I remember correctly.

- Q. How many motion pictures did you release on that day? A. Three hundred reels a week.

Q. And how many subjects did those 300 reels per week comprise? A. Well, some of them had two subjects on them. It would be very hard to approximate that.

Q. Do you mean 300 separate subjects? A. Three hundred thousand feet would be more explicit, 300 reels of a thousand feet each, upon some of which reels were two subjects at times.

Q. You don't mean by that, that you had 300 subjects?



A. No, no, probably, oh, divided probably, fifteen subjects, 1  
twenty reels of each.

Q. That is what I wanted to get at. A. A large number  
of prints on different subjects were sold.

Q. When was it you learned that Mr. Kleine was to  
become a licensee of the Patents Company? A. I think it  
was in the latter part of August, or the first part of September,  
that he told me it had been finally decided to organize  
this company.

Q. When was it that you began your campaign to  
secure the agency of the European manufacturers? A. I began 2  
my campaign about January 11th, 1909, or 12th, I think  
it was, after the conversation that I had with Mr. Dyer—we  
were both in New York, and on the 9th, or 10th, we went back  
to Chicago, and after the conversation I had with Mr. Kleine  
I decided to go into the moving picture business.

Q. Kleine or Dyer? A. I meant Kleine, I saw Mr. Dyer  
also. Mr. Kleine was in New York, and I was also in New  
York, and after I got back in Chicago, about the 11th, or  
12th, and after that conversation I had with Mr. Kleine, I  
thought I would start something myself.

Q. And how many agencies did you acquire? A. I started 3  
with eighteen, and ended with thirty-two.

Q. Foreign manufacturers? A. Yes, sir; I had the world's  
market corralled, all but the manufacturers that were in  
the Patents Company, and the Great Northern, which was  
negotiating with us.

Q. And did you finally get the Great Northern? A. We  
did not.

Q. How long did you remain with the International  
Projecting & Producing Company? A. Well, I was a Direct-  
or of it, and it didn't last more than a year; so I was prac-  
tically with it all its life.

Q. Were you the manager of it the most of the time? A. 4  
I was not.

Q. What did you do after you left that company? A.  
I went back to the Show World again.

Q. And how long did you stay with the Show World?  
A. About a year—no, I was with the Show World about six  
months.

Q. What did you do then? A. I went with the New York  
Motion Picture Company.

1 Q. And in what capacity? A. As advertising and sales manager.

Q. And how long did you remain as sales manager with the New York Motion Picture Company?

Mr. GROSVENOR: Objected to, as improper cross examination, and relating to new subjects, none of which were referred to on direct examination.

2 The Witness: I was there more than two and one-half years; no, let me see, now, not quite two and a half years.

By Mr. KINGSLEY:

Q. What was the business of the New York Motion Picture Company? A. The manufacturing and importing of films.

Q. And did they have practically the same agencies as you had prior to that? A. No, sir, they had only two of them.

Q. Did they manufacture films? A. Yes, sir, they did.

Q. In large quantities? A. Yes, sir.

3 Q. And how many subjects a week were they releasing at the time you left them? A. Seven.

Q. Did that include importations, as well as subjects they had manufactured? A. Yes, sir.

Q. When you left them where did you go? A. Mutual Film Corporation.

Q. And in what business is the Mutual Film Corporation? A. It purchases films from manufacturers, and rents them to theatres.

Q. In other words, it is a large film rental exchange? A. Yes, sir, with branch offices all over the country.

4 Q. How many branch offices has the Mutual Film Corporation?

Mr. GROSVENOR: I make the same objection as to this being new matter, and in no way relating to the questions asked on direct examination.

The Witness: More than fifty.

By Mr. KINGSLEY:

1

Q. Are they located throughout the country generally?  
A. Yes, sir, and Canada.

Q. How many manufacturers supplied films to the Mutual? A. About twelve.

Q. And what are the names of some of those manufacturers? A. American, Bronco—the Bucking Horse Film, Kay-bee, Keystone, Reliance, Majestic, Thanhauser. Let me see if I have got them all. Pilot, Solax, Gaumont, Lux, Eclair; that is all.

Q. What is the full name of the company we have been discussing as the “Mutual”? A. Mutual Film Corporation. 2

Q. Does the Mutual Film Corporation handle the product of these manufacturers exclusively? A. Some of them.

Q. How many of them? A. American, Kay-bee, Keystone, Bronco, Reliance, Majestic, and Thanhauser; that is seven.

Q. Do you mean to state that the Mutual Film Corporation handles the entire product of the seven companies you have named? A. It does.

Q. Does the Mutual Film Corporation own these companies which supply their entire product to it? A. It does not. 3

Q. Does it have contracts with them for the supplying of these films? A. Yes, sir.

Q. Now, the Mutual Film Corporation has, you think, about fifty branch offices located in this country? A. Yes, sir.

Q. And were those branch offices established by the Mutual Film Corporation, or did the Mutual Film Corporation buy a large percentage of them? A. Some of them were bought by the Mutual, and the balance were established. 4

Q. And how many would you say were bought by the Mutual? A. Quite a large number of them.

Q. Well, how many would you say? A. Well, they bought the Gaumont Company in Canada, six offices; and they bought the Empire and the Great Eastern, and the Metropolitan, and the Peerless, in New York City, and the Eastern in New York City and the Western Film Exchange in Milwaukee, and Kansas City; probably bought eighteen or nineteen offices.



1 Q. So that at least 18 or 19 were purchased by the Mutual Film Corporation? A. Yes, sir, and the rest of them they started.

Q. And the rest you started from the beginning? A. Yes, sir.

Q. How many subjects do you release each week now?

2 Mr. GROSVENOR: Objected to, as improper cross examination, and I also advise the witness that if he believes that these questions involve matters about which he does not want to testify he does not have to answer.

The Witness: I would like to make this explanation: Of course the purchasing of offices, and establishing of offices, is something that is not within my jurisdiction, or not under my control in any way, shape or manner, as an employe of the Mutual.

By Mr. KINGSLEY:

3 Q. And you are simply giving your best recollection? A. My answer is hearsay testimony.

Q. You are simply giving your best information about it? A. Yes, sir.

Q. There is no secret about it? A. No secret, no.

Q. How many subjects does the Mutual Film Corporation release each week? A. We release a programme varying from twenty-one to thirty-five different subjects in the various parts of the country.

Q. How many feet of film do these manufacturers allied with the Mutual Film Corporation turn out each week? A. That I do not know of my own knowledge.

4 Q. What is your best information? A. I might have my ideas about it, but then I would rather not tell them.

Q. Immediately after the first of January, 1909, you became a competitor of the Patents Company's licensees, did you not, in the motion picture markets of the United States? A. Yes, sir.

Q. And since that time, with the exception of the period when you were back in the newspaper business, you have

been a competitor of the licensees of the Patents Company?  
A. Yes, sir. 1

Q. Either as an investor, owning an interest in the business, or as an employee? A. Yes, sir.

Q. And at the present time you are allied with the Mutual Film Corporation, which is a competitor of the General Film Company? A. Yes, sir.

Q. And has been for some time? A. For about a year.

Q. Were you ever connected with the Independent Moving Picture Company of America? A. No, sir.

Q. Do you recall that there was a lawsuit between the Motion Picture Patents Company and the Independent Moving Picture Company of America? A. I do. 2

Q. And did you make an affidavit in that suit on behalf of the defendant? A. Yes, sir.

Q. And in that affidavit you set out certain conversations that you had with Mr. Kleine? A. Yes, sir.

Q. And with whom else? A. Mr. Dyer, I believe.

Q. In that affidavit you set out certain conversations which you had with Mr. Kleine and Mr. Dyer? A. Mr. George Spoor, and Mr. W. N. Selig.

Q. And the answer to the question, then, is, "Yes?" A. Yes, sir. 3

Q. Have you testified in any other suits against the Motion Picture Patents Company? A. I don't recall whether I made an affidavit, or gave a deposition, in the suit of the Patents Company against my own company, which was brought in Chicago, but never came to trial because the company failed—I remember having conversations with Mr. Wilkerson, who was then our attorney.

Q. And that you do not recall? A. No, I do not recall whether I made an affidavit in that suit. That company went out of business, and the litigation died. 4

Q. Your company was in litigation with the Patents Company? A. Yes, sir.

Q. And that was? A. The International Projecting & Producing Company.

- 1 Thereupon, J. M. ENSOR, a witness subpoenaed on behalf of the petitioner, of lawful age, duly sworn, deposed as follows:

Direct examination by Mr. GROSVENOR:

Q. Mr. Ensor, where do you reside? A. I am at Little Rock, Arkansas, at present.

Q. In 1909, and 1910, where were you residing and engaged in business? A. Denver, Colorado.

- 2 Q. What was your business in Denver, Colorado, in those years? A. I had what was known as the "Colorado Film Exchange"—we rented films and sold machines and all kinds of supplies to the theatres.

Q. Was your company, the Colorado Film Exchange, a member of the Film Service Association? A. We had a contract with the Patents Company.

Q. You took out a contract with the Patents Company after that company was organized? A. Yes, sir, but we had been buying films all the time from Kleine, and Selig, and Lubin, and all of them before.

- 3 Q. What manufacturers were you buying films from in the years 1908 and 1909? A. I was not with the Film Exchange in 1908, but I know what they were buying.

Q. What were they buying, whose films were they getting in 1909? A. Buying just the same that went into the Patents Company.

Q. Name them? A. Selig, Kleine, Essanay, Vitagraph, Lubin, Pathe Freres, Urban Eclipse, and Gaumont.

Q. Were these films shipped from the several factories to Denver, Colorado, to your place of business? A. Yes, sir; they were shipped to their agents; they had agents, they didn't come from the factories, but they had agents to supply us.

- 4 Q. They came from other States than Colorado? A. Yes, sir, came from other States than Colorado.

Q. Then, during the years 1909, and 1910, your company did business under a so-called license with the Patents Company? A. Yes, sir.

Q. How many film exchanges were there in 1909, and 1910, in Denver, Colorado? A. Three.

Q. Please name the three exchanges? A. Colorado Film



Exchange, George Kleine Exchange, and the Denver Film Exchange. 1

Q. The George Kleine Exchange was owned by, or connected with, the George Kleine Company in Chicago? A. Yes, sir.

Q. And who was the owner of the other exchange, the Denver Film Exchange? A. Well, it was a corporation—Buckwalter used to claim it, but I found out it was Selig's.

Q. Selig, the manufacturer? A. Yes, sir.

Q. Now, were these two other companies, or film exchanges, doing business in Denver, acquired by any other company in the early part of 1910, or in the Spring of 1910, or thereabouts? A. Well, the General claimed that they bought them out and consolidated, and Buckwalter came over then and took charge of Kleine's Exchange. 2

Q. That is the General Film Company? A. Yes, sir; claimed that they got those two companies, and claimed that they bought them out, and Buckwalter came up there and took charge of both of them.

Q. And was the business done thereafter in the name of the General Film Company? A. Yes, sir.

Q. Now, you may state whether or not you came to New York after the General Film Company had acquired these other two exchanges, or about that time, in connection with the sale of your business to the General Film Company? A. Yes, sir. 3

Q. Now, please state how you happened to come to New York on that subject? A. I don't remember whether we got a wire from Mr. Kennedy to come, or a letter, I can't say, but, anyhow, we were directed to come, and see what proposition they had for us, but I can't remember whether we got a wire, or a letter.

Q. Was this J. J. Kennedy, the President of the General Film Company? A. Yes, sir; anyhow I came. 4

Q. Now, did you come in response to that direction? A. Yes, sir, I came.

Q. Now please state where you went, and what you did, and what was said on the subject after you came to New York? A. Kind of tell it in my own words?

Q. Yes, to the best of your recollection? A. Well, I put up at a hotel, and Kennedy 'phoned to me what time he wanted me to come down to the Edison Building, I think it is at 10 Fifth Avenue, if I ain't mistaken, and then he 'phoned

1 me it would be a little later, and so I went down, and he was not quite ready, and I went into a room where there was a big table and there was an army of them sitting around it, and, of course, I met them, they introduced me to all of them around, and finally, I got tired of waiting, and I said "What's the reason some of you sitting here, you fellows, can't open up and tell me what that offer is?" and none of them opened up, and Kennedy came in after a while, and sat down and the first thing he said was, "Now, Ensor, I want you to know, by God, that I am a bad man," and he said, "Whenever I make an offer or proposition one time,"  
2 he said, "I won't be responsible for the outcome, if it ain't accepted." That is about as near the words as I can remember. Well, I discussed about whether we would sell out or not, and I told him I had just begun to make some money out there, and that I didn't want to sell if I could help it, but I knew that they had the advantage of us, we had to get our supply from them; and finally he made us the offer or, I asked him to put it down in black and white, and he shoved me a piece of paper and said, "No," for me to put it down myself; and he said he would give us \$14,600 cash in five years' time in twenty payments at five per cent. interest and  
3 \$6,500 in seven per cent. preferred stock. Then he talked on a little while and he said of course we owed a week or ten days on films, which naturally we had a right to owe until the time for settlement, and he would pay up whatever we owed, and also take all merchantable machines and supplies off our hands that were as good as new, at the regular catalogued prices.

Q. Well, was anything else said about this offer? Did you accept it? A. I told him it was a corporation, and I only owned a part of it, that I couldn't accept it. It was  
4 the intention for me to take this offer back to my people, and I asked him, I said, "One of the first questions Mr. Wing will ask me"—he is the President—"Mr. Wing will ask the first thing if these notes are good, and I don't know whether you people have got anything behind this corporation or not, and I want to ask you if the Directors of this company will sign these notes as individuals, because we are satisfied they would be good if they were to," and he said, no, that it would not be necessary, the Directors would not sign them.

Q. Did you have any further conversation on the sub-

ject? A. Then I asked Mr. Kennedy after we got out, or left that room, I told him I had about everything I had tied up in there, and some of the other people who had some stock were getting scared for fear they were going to cancel them, and would I be safe in buying some more stock or not, and asked for him to come clean with me and tell me the truth, so I would know how it was, and he said, "Go ahead, not any danger, as long as you do right we will not cancel you;" and I went back and bought a lot more stock and then got thrown in the neck.

1

Q. Well, the Colorado Film Exchange did not sell out to the General Film Company? No, sir; they sold them out.

2

Mr. KINGSLEY: Objected to as not responsive; I move to strike it out.

By Mr GROSVENOR:

Q. Then thereafter, through the Summer of 1910, did you and the Colorado Film Exchange endeavor to live up to the terms and conditions of the license with the Patents Company?

Mr. KINGSLEY: Question objected to as calling for the conclusion of the witness.

3

The Witness: We regarded our contract like the pupil of my eye, because I knew if we gave them the least show in the world, that we would get the hooks thrown into us. That is the way I felt all the time, and I was as careful about everything as I could be.

By Mr GROSVENOR:

Q. You may state whether or not your license was cancelled in September, 1910? A. Yes, sir; we got a wire.

4

Q. I show you a telegram dated September 14, 1910, and ask you if that is a wire which you received notifying you of your cancellation? A. Yes, sir.

Mr. GROSVENOR: We offer this telegram in evidence.

The telegram offered in evidence was marked by the Examiner "Petitioner's Exhibit No. 205," and is as follows:



1

**Petitioner's Exhibit No. 205.****THE WESTERN UNION TELEGRAPH COMPANY.****Incorporated.**

(Part of telegram form omitted.)

RECEIVED at 1114 to 1118 17th St., Denver, Colo.  
72 NY. MO. 60.

New York Sep't 14-10.

- 2 Colorado Film Exchange Company,  
320 Charles Bl'g, DENVER, COLO.

The license granted by this company to you to Sublease licensed Motion Pictures is hereby cancelled for violation on your part of its terms and conditions relating to the use of such pictures and we notify you to return all licensed motion pictures to the respective licensed manufacturers and importers thereof upon the expiration of twenty days from this date.

- 3 Motion Picture Patents Company.  
11:50 A. M.  
90 Lake St.,  
Chicago, Ill.

---

By Mr GROSVENOR:

- Q. I show you a mimeographed or multigraphed letter, on the letterhead of the General Film Company, dated Denver, Colorado, September 15, 1910. State whether or not that was a letter issued to the trade in your territory about the time stated in the letter.
- 4

Mr. KINGSLEY: Objected to as calling for the conclusion of the witness, and manifestly not within his knowledge.

The Witness: Yes, sir.

By Mr GROSVENOR:

Q. Where did you get that letter? A. Some of the ex-

hibitors brought it in to us in Denver, and we filed it; we saved it. 1

Mr. GROSVENOR: I offer it in evidence.

The Witness: This was sent out to the different exhibitors.

The paper offered in evidence was marked by the Examiner, "Petitioner's Exhibit No. 206," and is as follows: 2

**Petitioner's Exhibit No. 206.**

**THE GENERAL FILM COMPANY**

201-206 Nassau Building

Sixteenth and Larimer Streets

H. H. Buckwalter,

Manager.

(Part of letterhead omitted.)

Denver, Colo. Sept. 15, 1910. 3

**TO EXHIBITORS:**

We are advised by the Motion Picture Patents Company that the license of the Colorado Film Exchange has been cancelled. It will be cut off from licensed film and exhibitors who are now securing service from that exchange will in the future be taken care of by the Denver branch of the General Film Company. This is in line with the promise made by the Patents Company many months ago to cancel any Exchange that was not properly caring for its customers. 4

The manufacturers of licensed film long ago determined that the exhibitor was the man to be taken care of and not the exchange. They realized that in order to bring the business to its highest earning capacity it would be necessary to give the showman everything possible so he could readily and quickly get his theatre on a profitable basis. The idea has not been to increase prices or otherwise impose any hardships of any nature on the exhibitors. On the contrary the business will be handled under exactly the

- 1 same management and methods as characterized the Denver Film Exchange in its very successful dealings of several years. No revolutions or startling innovations of any kind will be attempted. The matter will simply be one of a business nature of renting goods and the schedule of prices which heretofore has been very satisfactory to customers will be maintained. There will be no new rules and no fresh restrictions. Trade will be handled on practically three points. The exhibitor must pay for his film service. He must take care of the reels. And return shipments by the first train after the show. The long established
- 2 rules of the Motion Picture Patents Company of course will prevail and as these have been received with favor no objection will be found to them.

- The licensed customers of the Colorado Film Exchange will be received by the Denver branch of the General Film Company if application for service is made immediately. Under the rules if an exhibitor shows unlicensed film his application can only be granted after consideration by the Motion Picture Patents Company and in some cases we believe licenses will be refused. Application for service made immediately to this exchange will be received without
- 3 the necessity of submitting it to the Patents Company other than the regular form of reporting new customers. This will remove any doubt regarding the securing of licensed service but it must be understood that such application must be made without delay.

- The matter of supplying film, of course, will be handled in a more liberal manner than before because of the enormous purchases by this exchange. The Denver branch of the General Film Company will not be run for individual profit as before but rather with the idea of increasing the business with better service and more liberal supply of new films. The standing orders of the exchange already amount to more than the combined purchases of the three individual exchanges and the manufacturers feel if it is necessary to double the number of new reels bought each week for this office there will be no hesitation whatever in supplying the demand.
- 4

We extend the invitation to secure service from this exchange to exhibitors who are not now licensed but who wish to secure the highest grade film for the least amount of money and at the same time have the assistance of a



very large and powerful corporation behind them in every 1  
manner possible to bring profit to their shows.

Yours very truly,  
THE GENERAL FILM CO.,  
By H. H. Buckwalter, Manager.

HHB/H

By Mr. GROSVENOR:

Q. Do you know whether or not the notice of the can- 2  
cellation of your license was sent to your customers? A.  
Yes, sir.

Q. How soon were they advised of the fact that your li-  
cense had been cancelled? A. It seemed that they knew it  
about as soon as we did. You see, it was strong competi-  
tion there, and they wanted the business. George Greaves  
—I had a contract with George Greaves for \$475.00 a week,  
if I ain't mistaken; I don't think I can make any mistake  
on that amount, and I am satisfied I am right on it—and  
Buckwalter had been wanting to get this contract for the  
"Princess," and I think that was one of the causes of our 3  
getting a cancellation as soon as we got it. Of course it  
was meant for us to get it, anyhow.

Mr. KINGSLEY: I object to that statement of the  
witness, and move to strike it out.

By Mr. GROSVENOR:

Q. Was Buckwalter the local manager, or the manager  
of the local branch of the General Film Company, at Den-  
ver? A. Yes, sir.

Q. How much business had you been doing per week? 4  
A. Well, at that time I think we had around \$3,000 of good  
business a week, if I ain't mistaken.

Q. Were your customers all located in the State of  
Colorado? A. No, sir.

Q. Please name the States in which they were located?  
A. We rented some in Texas, and in New Mexico, and Wyo-  
ming, and they just cut us right off as soon as our supply  
was off.

1 Q. What effect upon your business did this notice of cancellation have?

Mr. KINGSLEY: Objected to, as incompetent, irrelevant and immaterial.

2 The Witness: Why, it just took it away from us, just took the business right away from us. When George Greaves came down to the exchange to talk the thing over with me, you see he had received notice from the General Film Company, so did the rest of the customers for they came over immediately; there would not be any questions asked in regard to licenses and so on, you know, but if they wanted any length of time they would have to go through some riga-ma-role to get their license, and I advised George not to try to stick to me, as I had no supply, and I was at the end of my row, and couldn't do anything. He was our best customer, and took first runs.

By Mr. GROSVENOR:

3 Q. In the early part of 1909 did you have, or own, a theatre at Delta, Colorado? A. Yes, sir.

Q. How many theatres were there in Delta at that time? A. That was in the early part of 1910; there were three theatres.

Q. Were these all licensed theatres? A. There were two, and we put up one.

Q. Who owned the other two theatres? A. Well, I forget the name of the owner, but Buckwalter, I suppose, one of them, and the Kleine Supply one of them. That was before the General put out those two.

4 Q. Now were you able to get service, licensed service, for your Delta house? A. I was at the start, and Buckwalter, I guess, made such a howl to Selig—

Mr. KINGSLEY: I object to what the witness may have guessed about it, as not proper.

The Witness: Anyhow, they refused to let us put our own films in our own house, and I came to Chicago, to see what was known as the "Western Committee," Kleine and Selig, and finally they decided that they would let me go

back and supply my own house with my own films. You had to ask them every time you turned around, it looked like. 1

Q. What business are you in now? A. I have got some little theatres, and I am subrenting my reels.

Q. That is, you subrent such things as are known as special features? A. No, where they take so many a week, just a regular exchange, but older stuff after they get through with them in the city, where they are paying a good price for them, and this is kind of old film.

Q. And you are doing this business down in Little Rock? A. In Little Rock; yes, sir. 2

Cross examination, by Mr. KINGSLEY:

Q. When was it you came to New York to see Mr. Kennedy? A. I think it was in June.

Q. Of 1910? A. 1910, yes, sir.

Q. Did you produce a copy of the telegram, or letter, by virtue of which you came to New York for the information of Mr. Grosvenor at any time? A. Who is Mr. Grosvenor? This gentleman?

Q. Yes; the Government's attorney. A. Can I do what? 3

Q. Did you produce for Mr. Grosvenor's information a copy of the letter, or telegram, which asked you to come to New York? A. Can I produce the letter? I don't get your full meaning.

Q. Well, we will try it again. A. All right.

Q. You swore on your direct examination that you received either a letter, or a telegram, asking you to come to New York? A. I came to see Mr. Kennedy about selling us out, or about buying us out.

Q. To see about selling your exchange, did you not? A. Yes, sir. 4

Q. You received a telegram, or a letter, asking you to come? A. Yes, sir; that is when I came to sell out to the Patents Company.

Q. What became of that letter or telegram? A. I don't know.

Q. Did you turn it over to Mr. Grosvenor? A. No, I don't think I did; I don't think it is in that bunch.

Q. Now when was it you built this theatre of yours at Delta, Colorado? A. That must have been in June, that



1 must have been 1909, that must have been 1909; I won't be positive, not having anything to look at here.

Q. June of 1909? A. It was before the Kleine and Selig consolidation.

Q. You think it was in June, 1909? A. I think it was, yes, sir.

Q. You say there were two other licensed theatres running in Delta, Colorado, at the time you built your theatre? A. Yes, sir.

Q. What did you call that theatre? A. I forget what we did call it; just a little theatre.

2 Q. How many theatres did you own at that time? A. I owned five or six.

Q. Where were they located? A. One at Grand Junction, and one at Montrose, and one at Delta, the one we tried to handle at Delta.

Q. How do you know that Selig was interested in Buckwalter? A. Well, it was a corporation; I don't know of course, I never went and looked it up directly myself.

3 Q. You have no first-hand information on the subject whatever, have you? A. Of course, that was the common talk, that he owned it, of everyone there. Of course, I never saw, or looked up, of course, to see myself that he owned the stock.

Q. You never attempted to get any definite proof on the subject, did you? A. No, sir; never looked up to see who owned the stock.

Q. So that when you testified that Buckwalter was really controlled by Selig, you were merely giving us the talk that came to you? A. Pretty strong talk.

Q. I am not asking you that, but, if you are merely giving us the talk? A. Yes, sir.

4 Q. You never investigated, then, or had it investigated, for the purpose of getting positive proof on the subject? A. No; I never looked up the stock.

Q. Now, will you give us the list of theatres which you, or your company, were interested in 1910, and their locations? A. Well, Montrose, Colorado—

Q. Give us the names of the theatres, the towns and the names. A. That theatre was named "Novelty."

Q. Yes? A. The one at Grand Junction was named "Novelty," and I don't remember what they did decide to call the one at Delta, because it had been started for so little a bit

over there, and I was so disgusted the way it went, and we lost on it, that I can't tell you what we did call that theatre. 1

Q. Now, the next one? A. One at Durango.

Q. What was the name of that? A. It was in the Opera House; Requa ran that for us.

Q. Where were the others? A. That is all we had.

Q. Five or four? A. Four, I think.

Q. These films which you shipped around to the various States there, you rented, did you not? A. There was a contract. I don't know whether you would call it rented, or leased, or what.

Q. When you sent them out, the exhibitor would return them to you? A. Yes, sir. 2

Q. And you rented them to the exhibitor? A. Yes, sir.

Q. And those were films which you had obtained from the Motion Picture Patents Company under a license, by virtue of a rental contract, or license agreement? A. Whatever that contract is.

Q. Now, you say you were offered \$16,400 cash in five years' time in twenty payments at five per cent., and \$6,500 in seven per cent. preferred stock? A. I think that was it. I will look at it again (looking at paper). 3

Mr. GROSVENOR: When was this memorandum of figures which you are using, written by you?

The Witness: When I was at New York, at the Edison Building—that was some time in June. \$14,600 at five per cent., in twenty payments, in five years, and \$6,500 in preferred stock at seven per cent.

By Mr. KINGSLEY:

Q. Would you mind letting me look at that memorandum? 4  
A. No, sir (passing counsel paper).

Q. You are still in the rental exchange business, are you not? A. I am sub-renting some films.

Q. Handling independent films? A. Yes, sir.

Redirect examination by Mr. GROSVENOR:

Q. This Buckwalter referred to by you, whatever his relation to Selig, was as a matter of fact, made local manager of the General Film Company as soon as a branch of

1 the General Film Company was established at Denver, Colorado? A. Yes, sir.

Q. I show you a letter on the letterhead of the Motion Picture Patents Company, dated June 20th, 1913, addressed to J. M. Ensor & Company, Little Rock, and ask you if that is a paper received by you in the course of mail? A. Yes, sir.

Mr. GROSVENOR: I offer it in evidence.

The paper identified by the witness is marked Petitioner's Exhibit No. 207, and is as follows:

2

**Petitioner's Exhibit No. 207.**

**MOTION PICTURE PATENTS COMPANY**

80 Fifth Avenue, New York

June 20th, 1913.

J. M. ENSOR & CO.,  
215 W. Second St.,  
Little Rock, Ark.

3

Dear Sir:

4

You are hereby notified that the supplying of motion pictures for use on motion picture projecting machines containing the inventions, or some of them, of Letters Patents Nos. 578,185, 580,749, 586,953, 588,916, 673,329, 673,992, 707,934, 722,382, 744,251, 770,937, 771,280, 785,205, and 785,237, owned by us, constitutes an infringement of said Letters Patent and makes you liable to a suit for an injunction, accounting and damages, including all profits, gains and advantages that you may have received or that may have accrued to you by reason of such infringement in selling, leasing, or renting motion pictures for use on such motion picture projecting machines.

Yours truly,

MOTION PICTURE PATENTS COMPANY,  
By H. N. M.

HNM/ACD



EMANUEL MANDELBAUM, a witness subpoenaed by the petitioner, being first duly sworn by the Examiner, testified as follows: 1

Direct examination by Mr. GROSVENOR:

Q. Mr. Mandelbaum, where do you reside? A. Cleveland, Ohio.

Q. Were you engaged in business in Cleveland, Ohio, in 1909 and 1910? A. Yes, sir.

Q. What was the name of your company and what was the character of business it was engaged in? A. The Lake Shore Film & Supply Company, engaged in the renting of motion picture film. 2

Q. Was the Lake Shore Film & Supply Company a member of the Film Service Association? A. Yes, sir.

Q. Did that company take out a license from the Patents Company in the early part of 1909? A. Yes, sir.

Q. Did it thereafter continue to do business pursuant to the terms and conditions of that license, so far as it was able to do so? A. Yes, sir.

Q. Do you recall about what time the General Film Company was organized and commenced doing business? A. I believe it was the Spring of 1910. 3

Q. Did you go to New York in connection with the subject of selling out to the General Film Company after the General Film Company had been organized, and had begun to acquire various film rental exchanges? A. Yes, sir. I made a trip some time in August, I believe—oh, in September, 1910. If I would have some of the correspondence, I could recall the dates better.

Q. I show you a copy of a telegram addressed "H. N. Marvin," July 30th, 1910. A. July; that was the time. I did not quite get the time. I did not get down at that time. I came down later. After that. I cannot give you just the exact date of that. I was down here the early part of August. 4

Q. Whom did you see in this City on the subject of selling out your business? A. I first saw Mr. Waters, and then Mr. Kennedy.

Q. What Mr. Waters is this? A. Mr. Percy L. Waters, who was then general manager of the General Film Company.

1 Q. What conversation, if any, did you have with Mr. Waters on this subject? A. Well, nothing in particular in reference to the sale, except that he made an appointment for me to meet Mr. Kennedy to take the subject up with him.

Q. This is Mr. J. J. Kennedy, President of the General Film Company at that time? A. Yes, sir.

2 Q. Please state what took place at the interview, to the best of your recollection; the interview with Mr. Kennedy? A. I cannot recollect the exact interview. We had a conversation of quite a long time, when the subject was broached about the buying or selling of the exchange.

Q. Had the General Film Company at the time that you had this talk with Mr. Kennedy, acquired any rental exchange in Cleveland? A. Not in Cleveland; no, sir.

Q. Had it acquired any rental exchange in the vicinity of Cleveland, which entered into competition with your company? A. Just to a very small extent. That is, Pittsburg was our nearest competitor, and they acquired all the interests of the Pittsburg Calcium Light & Film Company some time before that.

3 Q. Returning to this interview with Mr. Kennedy, please state what was the result and the conversation, so far as you recollect it? A. When the subject of the sale was brought up, Mr. Kennedy asked me to state a price. I told him that I did not think there was any use of me giving them a price on my exchange, because, as I understood, the prices were all fixed. In reply to that, Mr. Kennedy said that he would not entertain the purchase of the exchange unless I stated my price. I then gave him the price of \$75,000. Mr. Kennedy threw up his hands and said, "We cannot do any business with you." And I asked Mr.  
4 Kennedy to state his—to make me an offer. I said, "You asked my price, which I gave you, now give me your offer." He said, no, he would not make me an offer. With that, we both went out to Mr. Waters' office in front. Mr. Kennedy had left and Mr. Waters advised me to call the next day, which I did. After I saw Mr. Waters, and waited quite a while, he advised me to go down to 52 Broadway to see Mr. Kennedy.

Q. To see whom? A. Mr. Kennedy. I waited there for quite a while.

Q. Never mind about that. State just as briefly as you

can. You saw Mr. Kennedy, and what happened when you saw him? A. I finally called for Mr. Kennedy, and he came out and I told him that I was about to leave town, and I wanted to know whether he wished to make me an offer before I left. He said that he never intended to make me any offer. So I left the office. The next day I was called up to the General Film Company's office, and, together with Mr. Waters, walked into Mr. Kennedy's office, and in Mr. Waters' presence, Mr. Kennedy gave me an offer which I accepted. Mr. Kennedy asked me whether it was satisfactory. I told him that under the conditions I could not do otherwise but accept. If you wish the price stated, I will state it here.

Q. Yes, state the price? A. The price agreed upon was \$42,000, \$30,000 in deferred payments, in five years; \$12,000 preferred stock of the General Film Company.

Q. Did you then return home? A. I returned home the following day, that is, after seeing Mr. Waters again, and arranging with him regarding some details as to the books and care of the office under the new management.

Q. This was the middle of August, 1910? A. 1910.

Q. Then after you returned home, you may state whether the negotiations fell through. Did they or did they not? A. Yes, they did.

Q. What was the trouble, briefly stated? A. The first trouble was on account of my refusing to turn over the business when the General Film Company had sent a representative down with a letter asking me to turn over this business.

Q. Had anything been put in writing at that time? A. I had nothing in writing, and on the day of the sale or the agreement of sale, I stipulated that I must have a contract before delivery, and this contract must be approved by my attorney. And when the representative of the General Film Company came to our office with the order to turn over the business, I asked him if he had any other papers with him, and he said no. Consequently, I told him that I would not turn over the business until I received my contract, and it was approved by my attorneys.

Q. Then the negotiations in the matter were terminated early in September, were they not? A. A week after the representative had called.

Q. You may state whether or not the General Film Com-



1 pany acquired another rental exchange shortly thereafter in Cleveland? A. They acquired an exchange immediately, the same week after they had broken off negotiations with us.

Q. Did you continue to do business from this time—that is, September, 1910, for several months under the license agreement? A. We continued to do business until March 6th, 1911, under the license agreement.

Q. I show you a letter dated February 17th, 1911, on the letterhead of the Motion Picture Patents Company, and ask if that is a letter received by you at the time stated?  
2 A. Yes, sir.

Q. Was that a notice of cancellation of your license?  
A. Yes, sir.

Mr. GROSVENOR: I offer it in evidence.

The paper identified by the witness is marked Petitioner's Exhibit No. 208, and is as follows:

**Petitioner's Exhibit No. 208.**

**MOTION PICTURE PATENTS COMPANY**

3 80 Fifth Avenue, New York

February 17, 1911.

The Lake Shore Film & Supply Co.,  
314 Superior Ave.,  
Cleveland, Ohio.

Gentlemen:—

4 Pursuant to the right reserved by this Company under the first clause of Section Nineteen of the Conditions of License forming part of the Exchange License Agreement existing between you and this Company and bearing date the fourteenth day of January, Nineteen Hundred and Nine, we hereby notify you of our intention to terminate said License, and that same will terminate at Eight o'clock A. M. on Tuesday the seventh day of March, Nineteen Hundred and Eleven, unless sooner terminated by this Company for any breach of the Conditions of License.

Yours truly,  
MOTION PICTURE PATENTS CO.,

By W. P.

By Mr. GROSVENOR:

1

Q. This letter, Exhibit No. 208, being a notice of cancellation, says that it is under Section 19. Is that the clause of the exchange agreement which gave the Patents Company the right to cancel the license without cause on 14 days' notice? A. I believe that is the section.

Q. Was there any reason assigned to you for the cancellation, outside of this letter? A. None whatever.

Q. How large a business, gross business, was the Lake Shore Film & Supply Company doing at that time, weekly; approximately? A. Approximately \$4,000 a week in rentals.

2

Q. Do you know whether or not notices of the cancellation of your license were sent to your customers? A. Yes, sir.

Q. Were they or were they not? A. They were.

Q. What effect did the cancellation, if any, have upon your business? A. Well, it did not have an immediate effect, owing to the fact that the Lake Shore was at that time very popular with the trade, and in spite of the strong competition with the General Film, we managed to hold most of our business, although at cut prices; but after the cancellation was when we suffered most.

3

Q. I am talking about the cancellation. A. After the cancellation?

Q. What effect did the cancellation, if any, have upon your business? A. Why, it had a bad effect, because we have lost more than half of our business after the cancellation, and those that we supplied, we could not supply as satisfactorily as we did before.

Q. I show you a letter dated January 7th, 1910, on the letterhead of the Edison Manufacturing Company, addressed to that company, signed "Frank L. Dyer." Please state whether that is the letter received by you in the course of the mails, about the time stated on the letter? A. Yes, sir.

4

Mr. GROSVENOR: I offer it in evidence.

The paper identified by the witness is marked Petitioner's Exhibit No. 209, and is as follows:

1

**Petitioner's Exhibit No. 209.**

EDISON MANUFACTURING CO.

Main Office and Factory

ORANGE, N. J.

(Part of letterhead omitted.)

Orange, N. J., Jan. 7, 1910.

The Lake Shore Film & Supply Co.,

314 Superior Ave., N. E.,

Cleveland, Ohio.

2

Gentlemen :

Yours of the 4th inst. by your Mr. Mandelbaum has been received. I was in the office of the Patents Company when you telephoned Mr. Marvin from Cleveland on the subject of purchasing the United.

3

Speaking generally, I am in favor of all plans for consolidating the film rental business into the hands of reliable and responsible business men. I think the business can be handled very much more effectively and more profitably to all concerned by a few substantial men than by a large number of exchanges all in active and sometimes unfair competition. In principle, I would thoroughly approve of the proposition of your purchasing this United.

If any objections later develop, it would be because of the fact that in purchasing the United, something was done that materially alters the present status of the exchanges in Cleveland, Ohio. If however, you are making a simple out and out purchase, I am quite sure that there can be no possible objection to it.

4

Of course it is of the highest importance that after you acquire the United, the character of service to the various exhibitors in Cleveland and vicinity is not adversely effected. We do not give any definite guarantees as to exclusive territory as you know, but we have made it a rule that when a territory is satisfactorily covered by an exchange, not to appoint another exchange in that locality.

I think you will be perfectly safe in relying upon my



assurance in this respect. In order that I may be able  
to give you a more definite statement regarding the pur- 1  
chase of the United by you, it might be desirable for you  
to outline exactly what you propose to do, and then I can  
pass upon the matter definitely in connection with my asso-  
ciates.

Yours very truly,

Frank L. Dyer,  
Vice President.

FLD/MH

2

By Mr. GROSVENOR:

Q. Mr. Mandelbaum, I show you typewritten copy of a  
letter dated October 27th, 1910, signed J. J. Kennedy.  
Where did you get that copy? A. I got that from the  
National Vaudette Film Company of Detroit.

Q. Can you procure the original of that letter for me?  
A. I could not say whether I could, as the General Film  
Company now owns that branch, or owns that exchange,  
and the original might be in the records there.

Q. Is that a copy of a letter received by the company 3  
you have referred to? A. It is a copy of a letter received  
by the company.

Mr. GROSVENOR: I offer this copy in evidence, and  
ask counsel for the General Film Company, which  
according to the testimony of the witness, has  
acquired the business and property of the company  
named on that letter, to produce the original.

Mr. KINGSLEY: I object to it as incompetent, imma- 4  
terial and irrelevant, and not binding upon any of  
the defendants, and as not being the best evidence.

The paper identified by the witness is marked  
Petitioner's Exhibit No. 210, and is as follows:

1                    **Petitioner's Exhibit No. 210.**

THE NATIONAL-VAUDETTE FILM CO.

Film Renters.

69-71 Griswold Street,

(Part of letterhead omitted.)

Detroit, Mich. October 27, 1910.

2            The National-Vaudette Film Company,  
            69 & 71 Griswold Street,  
            Detroit, Michigan.

Dear Sirs:—

I am enclosing in duplicate, the contract which is written confirmation of the verbal agreement between you and the General Film Company, regarding the sale of your exchange. I am also enclosing duplicate copies of resolutions that should be passed by your stockholders and bill of sale.

3            These papers are prepared with the object of the contract being executed first. A meeting of your stockholders should be called in conformity with your by-laws and the contract should be acted upon by the stockholders in the manner indicated by the resolutions that are enclosed and bound with the bill of sale. The officers of your Company will then have full authority of the stockholders to execute the bill of sale.

This method of arranging for the transfer is in the best interests of the stockholders as well as of the officers of the Company and the General Film Company.

4            The enclosed form of resolutions was prepared for the sole purpose of saving your officers and Secretary the trouble of drawing resolutions.

The enclosed form of contract, resolutions and bill of sale have been submitted by a number of exchanges to their counsel and in each instance they have been approved without any changes or discussion. Thus far the counsel of the exchanges have stated that this method of making the transfer is the best that could be adopted in the interest of all the parties.

In your night lettergram of October 6th, you state that you "will make transfer when stock, contracts and cash are turned over and approved by you." In this connection, I will inform you that the only conditions that will govern the transfer are compliance with the terms under which you, without any inducement or request from us, sold your exchange. The foregoing quotation from your telegram caused me to take the preparation of the enclosed agreement up in regular order instead of pushing it ahead of some others, as I contemplated doing when I communicated with you. 1

Please bear in mind that the enclosed papers amount to nothing until they are executed, and the officers of the General Film Company could not, even if they wanted to, make any payments of money except upon a contract. 2

There is no necessity for further communications similar to the telegram referred to. If you regret having offered and sold your exchange, we will cheerfully drop the matter. We did not solicit you to sell your exchange. We agreed to pay you a price that was so fair that we were and are indifferent as to whether you accept or refuse it, and we have no desire to force you or any one to carry out a transaction that is not entirely agreeable to you. 3

The General Film Company now has a license in Detroit and will operate an exchange there under its license.

The foregoing is not intended to be offensive and is written for the sole purpose of candidly informing you of the General Film Company's attitude. If I am mistaken and you do not desire to withdraw from your agreement, I can if you desire, prepare supplementary documents which will provide for each of your important stockholders receiving his portion of the stock and his portion of the quarterly payments without maintaining any connection with your Company or with your other stockholders. 4

Yours very truly,

Mr. GROSVENOR: The defendants may produce either the original, which should be, according to the testimony of the witness, in the Detroit offices of the General Film Company, or, if they desire, they may produce the carbon copy of the original which should be in the offices of the General Film Company. In the



1 absence of such production, I offer the above in evidence.

Mr. KINGSLEY: It certainly does not follow that because the General Film Company bought a rental exchange somewhere, that it necessarily found in that rental exchange all the correspondence that had been received there prior to the purchase, and I do not believe that this witness knows that this letter had been there, and I do not believe that he knows that that is a copy.

2 Mr. GROSVENOR: That can be brought out in cross examination.

By Mr GROSVENOR:

Q. I show you a letter dated January 18th, 1911, addressed to you. Please state whom that letter is from? A. This is from John Pelzer, who was at that time sales manager of the Edison Manufacturing Company, in the machine department.

3 Mr. GROSVENOR: I offer the fourth paragraph of that letter in evidence.

Mr. KINGSLEY: I object to this as incompetent, immaterial and irrelevant, not binding upon any of the defendants, and not pertinent to any of the issues in this action.

Mr. CALDWELL: And I object on the further ground that Mr. Pelzer was not connected in any way with the General Film Company.

The portion of the letter offered is marked Petitioner's Exhibit No. 211, and is as follows:

4 **Petitioner's Exhibit No. 211.**

Orange, N. J. January 18th, 1911.

Mr. E. Mandelbaum,  
106-108 Prospect Ave., N. E.  
Cleveland, Ohio,

My dear Mandelbaum:

\* \* \* \* \*

Regarding the General Film Company, I understand

that they are not opposed to taking over your Exchange. I would therefore suggest your coming on to New York, and having a conference with Mr. Kennedy. This is a personal tip, and I wish you would leave me out of this matter. 1

\* \* \* \* \*

With best wishes, believe me to be,

Sincerely yours,

J. Pelzer.

2

By Mr GROSVENOR:

Q. Did you have any further conference with any officer or employe of the General Film Company on the subject of selling out your business, that is, after this meeting that you have referred to that you had in August in New York City? A. After the time that I had agreed to sell?

Q. Yes. Did you take the subject up again later? A. I had several conferences. I do not exactly know where it applies to this answer. I had several conferences with several officers of the General Film Company and the Patents Company after that, but I cannot place the answer in the proper places here, not understanding the question thoroughly. 3

Q. Let me put it again. You went home in August, 1910, thinking that you had sold your business, and those negotiations fell through. That is right? A. Yes, sir.

Q. Did you resume negotiations at any later or subsequent time? A. I believe I did some time later. I had written to Mr. Waters, to P. L. Waters on the subject.

Q. In any event, you did not succeed in making a sale later? A. No, sir. 4

Q. That is up to the time your license was cancelled? A. No, sir.

Cross examination by Mr. KINGSLEY:

Q. Were you a stockholder in the National Vaudette Company, film renters, of Detroit, Michigan? A. Yes, sir. President of the company.

1        Q. You were President of the company at the time of the sale?    A. No, sir; not at the time of the sale. I was a Director and stockholder.

          Q. And you knew about the sale?    A. Yes, sir.

          Q. And the agreement between the National Vaudette Film Company and the General Film Company was carried out?    A. Not with me.

          Q. But it was carried out?    A. It was carried out with the balance of the stockholders.

          Q. Weren't they operating in the same territory as you, to some extent?    A. No.

2        Q. Didn't your lines interweave or conflict?    A. Hardly.

          Q. I show you a letter dated Orange, New Jersey, January 7th, 1910, Petitioner's Exhibit No. 209. Was this letter written to you in response to one which you had sent to Mr. Dyer?    A. Yes, sir.

          Q. Have you a copy of the letter which you sent to Mr. Dyer?    A. I would not say whether it is in the files or not.

          What was the purport of the letter which you sent to Mr. Dyer and in response to which you received the letter of January 7th, 1910, marked Petitioner's Exhibit No. 209?    A. I was negotiating at that time with the United Film Exchange Company at Cleveland to purchase their business.

3        Q. Did you ask for Mr. Dyer's advice on the subject?    A. I asked his advice, and others in the Patents Company and the General Film Company, on account of knowing there was some opposition, or there might be some opposition in my consummating the deal. I wanted to know their opinion and advice before entering into the deal.

          Q. You say that you wrote to somebody in the General Film Company at that time, in January, 1910?    A. I don't recollect whether it was at that time already organized—no, the General Film Company was not organized.

4        Q. So that you wrote to Mr. Dyer of the Patents Company?    A. Of the Patents Company, yes.

          Q. And Mr. Dyer thought it would be a good thing if you made an out and out purchase of the United?    A. I have not read the contents thoroughly (reading letter). He does not give me any definite advice in the letter as to the purchase.

          Q. Did you buy the United?    A. No, sir.

          Q. That negotiation also fell through?    A. Yes.

          Q. This paragraph of the letter of January 18th, 1911,



contains a statement on the part of Mr. Pelzer to the effect that he understands the General Film Company is not opposed to taking over your exchange, does it not? A. Yes, sir. 1

Q. Were you friendly with Mr. Pelzer? A. I was.

Q. Had you had any communication with him prior to the letter of January 18th, 1911, respecting the possibility of resuming negotiations for the sale of your exchange? A. I have no definite recollection on the subject, but I think that I saw him in Cleveland and talked with him on the subject.

Q. And was this paragraph of the letter marked Petitioner's Exhibit No. 211 in response or in regard to the same conversation you had with him in Cleveland, or was it in regard to some letter which you had written him just prior to January 18th, 1911? A. I think it was in regard to the conversation I had with him in Cleveland. 2

Q. He had been recently in Cleveland, and this subject had come up between you? A. Yes.

Q. I show you a letter on the letterhead of the Lake Shore Film & Supply Company, dated Cleveland, Ohio, November 30th, 1909, and ask you if that is a letter sent out by the Lake Shore Film & Supply Company, and if the signature upon it is yours? A. This letter was a personal letter to Mr. Mark, and should not have been signed "The Lake Shore Film & Supply Company." 3

Q. It should have been signed by yourself? A. Yes, sir.

Q. It was a personal letter? A. Yes, sir.

Mr. KINGSLEY: I offer it in evidence.

The paper identified by the witness is marked Defendants' Exhibit No. 34, and is as follows:

1

**Defendants' Exhibit No. 34.**

**THE LAKE SHORE FILM & SUPPLY CO.**

Film Renters

Moving Picture Theatres

Fully Equipped.

(Part of letterhead omitted.)

Cleveland, O., Nov. 30th, 1909.

2

Mr. M. H. Mark,  
610 White Bldg.,  
Buffalo, N. Y.

Dear Sir:—

3

As per conversation with you while in this city on the Exchange question, I agreed to write you about my views on the subject. As I am anxious to go down to New York, and I have other business besides on which I will have to go next week, I will be pleased to have you take this matter under your advisement and meet me in New York if possible next Tuesday or Wednesday.

The advantage that there would be in having but one Exchange in this city, both to the exhibitor the Exchange and the manufacturer, would be as follows:

4

The Exchange could so regulate the release of films in the city that they could supply all the down town exhibitors with a programme that would not conflict with one another. This fact alone would enable the Exchange to get more money out of the service, which the exhibitor would gladly pay for such protection, and it would be of great advantage to them. It would be an advantage to the patrons of the moving picture houses when they patronize more than one house as they would not see the same programme at all the places. Being able to get a better rental from the exhibitor, the Exchange could buy more reels and could buy such reels as are most in demand, and at the same time buy all the films made by all the licensed Exchanges. For instance, we are now buying the entire output, but there is a great demand for the Biograph and Selig films. If we would control this city, instead of buying duplicates of some of the films that are not in demand, we could buy more Biograph and Selig films, and

thereby satisfy the trade and give them such films as are  
 in demand and at the same time we could have the entire  
 variety that is obtainable. There would be no danger of  
 any rival Exchange putting in a film that is newer than  
 the customer was entitled to according to the price paid,  
 just in order to get even with his rival Exchange, which  
 tends to dissatisfy the patrons of an Exchange. Condi-  
 tions at the present time for an Exchange man are very  
 bad, and we might say unbearable and business done is very  
 unsystematic and haphazard, not being able to uphold any  
 price that is just, owing to the rivalry existing between com-  
 peting Exchanges, and the consequence is, no satisfaction  
 for the Exchange, Customer or patrons, otherwise, it could  
 be properly regulated and everybody satisfied, and it would  
 be more profitable for all concerned. It is hard to go into  
 every detail in this matter in writing, but the writer is sat-  
 isfied, that if such control could be had by an honest Ex-  
 change, one that would treat the customers with every con-  
 sideration they deserve, it would be a great advantage for  
 the business at large, and therefore, if it is possible to ar-  
 range any such thing as proposed, we would like to have  
 a trial at it, and would guarantee to purchase as many  
 films as there are now being sold in this city and more with-  
 in a short time. The only equitable way for everyone con-  
 cerned would be to work out a schedule, that films within  
 a certain age should bring a certain price, and when the  
 Exchange contracts for a certain class of service, such a  
 service should be delivered to the exhibitor. This could be  
 done under the supervision of the Patents Co. and they  
 could see that the Exchange carries out its contract with  
 the exhibitor. The prices to the exhibitor have been very  
 low and are still too low at the present time, however, the  
 exhibitor realizes that good service is what gets the business,  
 and we are trying to educate them as much as possible to  
 that end. Hence, if we have a schedule, and the exhibitor  
 tries a certain grade of service and he finds it is profitable,  
 he will even get a better service, as he naturally will  
 suppose that the better the service, the better business he  
 will do, this in time will tend to make the film Exchange  
 buy more reels and the manufacturers would profit there-  
 by. The customer would be satisfied and the Exchange  
 would have less trouble in serving their customers.

We hope the above will give you our views on the sub-



1 ject and if you go East, wire me so I may be able to meet you as I would like to take the matter up with Mr. Marvin, Mr. Kennedy and Mr. Dyer.

Awaiting your early reply, I am.

Yours very truly,

THE LAKE SHORE FILM & SUPPLY CO.

Per E. Mandelbaum, Treas.

M/CE

File X50.

2

By Mr. KINGSLEY:

Q. This letter which I have just shown you was an expression of your personal views at that time? A. Yes, sir.

Q. With respect to the film rental business? A. Yes.

Q. And this was based upon your experience as a practical man in the trade, was it not? A. It was, at that time.

Q. How long had you been in business at that time? A. That was about two years.

3 Q. You were the active manager of the Lake Shore Film & Supply Company in Cleveland at the time that the Patents Company cancelled the license? A. Yes, sir.

Q. And had its business grown up under your management and supervision? A. Yes, sir.

Q. The business, I suppose, was largely based upon the quality of the film that was supplied? A. The quality of the film and also the assurance of a steady supply, which is just as important.

4 Q. You would not say that the personal equation, as represented by the genial and engaging manner of the manager of the business had anything to do with it? A. It had a great deal to do with it.

Q. And these resources were still available after the cancellation? A. Yes, sir.

Q. And you held more than half of your customers, did you not? A. To the best of my recollection—no, we did not. We might have held half of the customers, but not half of the business.

Q. And you went ahead and handled independent films

from that time on, did you not? A. We handled independent films the best we could. 1

Q. You were in business for how long? A. Well, ever since that time until recently. That is, until about a year ago.

Q. And you sold out about a year ago? A. Yes, sir. The Lake Shore Film & Supply Company is still in existence.

Q. At the time that you sold out, how many customers did you have? A. I cannot tell exactly.

Q. Approximately? A. Approximately between 60 and 65.

Q. Whom did you sell out to? A. I sold my stock to the Mutual Film Corporation. 2

Q. And did you then go to work for the Mutual Film Corporation? A. Yes, sir.

Q. And have been with them since, have you not? A. I am not at present.

Q. Up to within a few days? A. Within a few weeks.

Q. Are you still in the film business? A. No, sir.

Q. You severed your connection with the Mutual some weeks ago? A. Yes, as far as active management is concerned.

Q. You still own an interest in it? A. Yes; hold some stock. 3

---

JULIUS H. MICHAEL, a witness subpoenaed by the petitioner, being first duly sworn by the Examiner, testified as follows:

Direct examination by Mr. GROSVENOR:

Q. Where do you reside? A. Cleveland, Ohio. 4

Q. Are you interested in any motion picture theatres in that city? A. Exhibiting four houses.

Q. You are interested in four exhibiting houses in Cleveland? A. Yes, sir.

Q. Please name those houses. A. The Alhambra Theatre, the Olympia Theatre, the Grand Theatre, and the Globe Theatre.

Q. In the early part of 1912, did you have the same theatres? A. All with the exception of the Olympia.

1 Q. Were all of these theatres you have named in the early part of 1912, so-called licensed theatres? A. They were.

Q. That is to say, you displayed the films of the so-called licensed manufacturers? A. We did.

Q. Did you, in the Spring of 1912, show in any of your theatres, the Kinemacolor pictures? A. We showed them at the Alhambra Theatre.

2 Q. What are Kinemacolor pictures? A. Kinemacolor pictures are pictures that are projected throwing natural color into them, known as natural color pictures. The coloring of the picture is done in the projecting of the picture.

Q. Were any of these colored pictures being manufactured by the so-called licensed manufacturers at that time? A. Not the Kinemacolor pictures.

Q. That is, were any pictures with natural color being manufactured by the licensed manufacturers? A. The parties controlled by the Motion Picture Patents Company had colored pictures amongst their supply, but they were not known as Kinemacolor or natural color pictures. They were hand-tinted pictures shown in colors.

3 Q. Was there a demand on the part of your patrons, that is to say, on the part of the people who visited your theatres, to see these Kinemacolor pictures? A. There was no direct demand for us to show Kinemacolor pictures. We figured that we could increase our patronage through showing Kinemacolor pictures.

Q. And you did so in one theatre? A. In the Alhambra theatre.

4 Q. What was the result of your exhibition of colored pictures? A. The licenses were cancelled in all of the four houses.

Q. Had you displayed any Kinemacolor pictures in the other three houses? A. We did not.

Q. A few months thereafter, did you get reinstated, that is, allowed to use the so-called licensed pictures? A. After we discontinued the showing of the Kinemacolor pictures, we were reinstated.

Q. Did you sign any agreement in connection with the reinstatement? A. I did.

Q. And what was that? A. It was a paper dictated by



the representative of the General Film Company at Cleveland. 1

Q. What was its tenor or purport? A. Simply to the effect that we would be reinstated—that in being reinstated, that we would show the product of the General Film Company or the Motion Picture Patents Company subject to their rules and conditions, for a period of six months.

Q. Is this paper which I show you, being a copy of a letter dated April 14th, 1912, addressed to the Motion Picture Patents Company, a copy of the letter which you sent them on the subject you have testified about? A. This is a copy. 2

Mr. GROSVENOR: I offer it in evidence.

Mr. KINGSLEY: I object to the alleged copy of the letter of April 14th, 1912, as incompetent, immaterial, irrelevant, as not the best evidence, and on the ground that the complainant has not served upon the defendant, Motion Picture Patents Company, a notice to produce, and on the further ground that there appears to be no such letter in existence.

By Mr. GROSVENOR: 3

Q. That is the carbon copy of the original which was given to the Patents Company? A. Yes, sir.

Mr. KINGSLEY: You mean given to the Patents Company or mailed?

The Witness: Mailed to the Patents Company.

Mr. GROSVENOR: I will ask the Patents Company to produce the original.

Mr. KINGSLEY: We have no such original. 4

By Mr. GROSVENOR:

Q. The original of the copy which was introduced was signed by you in whose presence? A. My stenographer.

Q. And then mailed? A. Yes, sir.

Mr. GROSVENOR: I offer it in evidence.

The paper identified by the witness is marked Petitioner's Exhibit No. 212, and is as follows:

1

**Petitioner's Exhibit No. 212.**

April 14, 1912.

Motion Picture Patents Company,  
80 Fifth Avenue,  
New York City.

Gentlemen:—

2

In reference to placing the association pictures at the Alhambra Theatre, operated by The Alhambra Amusement Company, The Globe Theatre, operated by The Globe Amusement Company, The Olympia Theatre, operated by The Olympia Entertainment Company, and The Grand Theatre, operated by The Grand Entertainment Company, all in the City of Cleveland, these various corporations agree to exhibit association pictures only, according to the rules governing the showing of these pictures, for a period of six months from above date.

Very truly yours,

3

Alhambra Amusement Company,  
Globe Amusement Company,  
Olympia Entertainment Co.,  
Grand Entertainment Company,  
By

---

By Mr. GROSVENOR:

Q. Was your license subsequently cancelled, that is, after the date of this reinstatement of April, 1912? A. It was.

4

Q. That is, the licenses in all these theatres were cancelled? A. Yes, sir.

Q. What was the cause? A. Through showing a picture made by an opposition company; I cannot remember the name of the maker. The picture was known as the Oliver Twist picture. Nat Goodwin, in Oliver Twist, showing at another house; at the Opera House. The house was operated by us during the summer months; and upon that picture going in there, there was a lease made direct to the owners of the Oliver Twist pictures for a period of one week for

the use of the Opera House to exhibit the Oliver Twist picture. The showing of the picture at the Opera House brought down the cancellation of all of the other houses for the General Film Service. 1

Q. This Opera House that you have just named, was not one of the theatres for which you had obtained licensed service under this letter of April 14th, 1912? A. It was not.

Q. I show you a letter dated July 10th, 1912, on the letterhead of the Motion Picture Patents Company. Is that one of the notices of cancellation you received? A. It is.

Q. And were similar notices received by the other theatres that you have testified you owned? A. Similar notices were received; yes, sir. 2

Mr. GROSVENOR: I offer it in evidence.

The paper identified by the witness is marked Petitioner's Exhibit No. 213, and is as follows:

**Petitioner's Exhibit No. 213.**

**MOTION PICTURE PATENTS COMPANY**

80 Fifth Avenue, New York

July 10th, 1912.

Grand Theatre,  
Cleveland, Ohio.

Gentlemen:

Licensed exchanges are not permitted by the terms of their License to supply motion pictures to persons who make use of unlicensed motion pictures. We are, therefore, notifying licensed exchanges not to supply service for use in your theatre after July 14th, 1912. 4

Yours truly,  
MOTION PICTURE PATENTS COMPANY,  
By J. B.

JB/ACL.



1 Cross examination by Mr. KINGSLEY:

Q. I show you a letter on the letterhead of the Grand, Globe, Olympia and Alhambra Theatres, Cleveland, Ohio, dated April 11th, 1912, and ask you if that is a letter emanating from your establishment and signed by you? A. It is.

Mr. KINGSLEY: I offer it in evidence.

The paper identified by the witness is marked Defendants' Exhibit No. 35, and is as follows:

2 **Defendants' Exhibit No. 35.**

ALHAMBRA, GRAND, GLOBE, OLYMPIA THEATRES

In Cleveland, Ohio. The Sixth City.

(Part of letterhead omitted.)

April Eleventh, Nineteen Twelve.

Motion Picture Patents Company,

80 Fifth Avenue,

New York City, N. Y.

3 Gentlemen:—

Confirming further our verbal application, for licenses to our several theatres made by Mr. Mark, acting as our representative, we desire to begin the use of licensed motion pictures in the Olympia Theatre, 3357 East 55th Street, Cleveland, Ohio, Friday, April 12th, 1912, the Alhambra Theatre 10403 Euclid Avenue Cleveland, Ohio, Monday April 15th, 1912, the Globe Theatre, 5217 Woodland Avenue, Cleveland, Ohio, Monday April 15th, 1912, and the Grand Theatre, 2181 East Ninth Street, Cleveland, Ohio, Monday April 15th, 1912.

4 We agree to abide by the terms and conditions of your licensed agreement covering a period of at least six (6) months from date and to use in our various theatres, only pictures licensed by you and supplied to us through a regularly licensed film exchange.

Yours very truly,

J. H. MICHAEL,  
Genl. Mgr.

File, J. D.

By Mr. KINGSLEY:

1

Q. How many houses did you have altogether in Cleveland? A. At the time of the first cancellation or the second?

Q. Well, at the time of the second cancellation? A. The second time the license was cancelled we were operating in five different houses.

Q. And one of them was the Opera House, was it not? A. Yes, sir.

Q. And you were operating the Opera House during the month of July, 1912? A. With the exception of one week that it was operated by the people who owned the Oliver Twist pictures.

2

Q. What time did you take possession of the Opera House that season for the summer business? A. I cannot say the exact date, but I should say the latter part of June.

Q. What sort of projecting machines did you use in your various theatres? A. We used what was known as a Powers machine.

Q. Do you know the number? A. No, I do not.

Q. Did you have a Powers machine in each one of the theatres? A. We did.

3

Q. And did you employ a Powers machine at the Opera House? A. We did.

Q. Isn't this letter which I show you and which is marked Defendants' Exhibit No. 35, in reality the agreement which you made with the Patents Company to abide by the terms of your license agreement? A. This was the letter, as I remember it, which we had to sign in order to be reinstated.

Q. And this is the statement from you to the effect that you will abide by the agreement already in existence? A. It is. Relative to the four houses in this letter.

4

Q. How was it that you came to write the second letter which you say you mailed to the Patents Company and which is dated April 14th, 1912, and is marked Petitioner's Exhibit No. 212? A. There was one letter that was originally written which I worded myself, which was not satisfactory to the representative of the General Film Company at Cleveland, and the wording had to be changed to conform to his idea before he would agree to send it on or notify the Patents Company to reinstate us.

1 Q. Did you mail that letter yourself? A. I don't think I did.

Q. Was the projecting machine upon which the motion picture known as Oliver Twist, which was shown in the second week of July, 1912, owned by you? A. It was not. It was rented.

Q. Was it rented by you? A. It was.

Q. What was the date of your second cancellation? A. I cannot recall that.

Q. Was it on or about July 11th, 1912? A. To the best of my recollection it was about that time.

2 Q. Were you at that time running the Olympia Theatre, at 3357 East Fifty-fifth Street, Cleveland, Ohio? A. We were running the Olympia Theatre.

Q. How long had you been running the Olympia Theatre at that time? A. From April 13th, I believe.

Q. Was that a licensed house? A. It was.

Q. On or about July 11th, 1912, did you run at the Olympia Theatre, a motion picture entitled "The First and Only Picture of the Mardi Gras Parade"? A. We did.

3 Q. Was that a licensed motion picture? A. It was made by our firm.

Q. What kind of a camera did you use at the Olympia Theatre? A. For the making of that picture?

Q. Yes. A. The camera did not belong to us.

Q. Whom did it belong to? A. The operator working it.

Q. What was the name of the camera? A. I don't know.

Q. What sort of a projecting machine did you use at the Olympia Theatre? A. Powers machine.

Q. When was this Mardi Gras picture shown? A. I cannot recall the date. It was in the Summer of 1912, but the exact date I don't remember.

4 Q. It was after this cancellation or before? A. It was after the first cancellation, and about the same time as the second cancellation, as near as I can remember. That is, the Mardi Gras picture was showing at the Olympia, and the Oliver Twist picture was showing at the Opera House about the same period, but the exact dates I don't remember.



New York City, July 10th, 1913. 1

The hearing was resumed pursuant to adjournment at 2:30 o'clock P. M., on this July 10th, 1913, at Room 47, Federal Building.

The appearances were the same as at the morning session.

Thereupon, MICHAEL LESSY, a witness subpoenaed on behalf of petitioner, of lawful age, duly sworn, deposed as follows:

Direct examination by Mr. GROSVENOR: 2

Q. Mr. Lessy, in the early part of 1909, where were you doing business? A. Philadelphia.

Q. What was the name of your concern? A. Philadelphia Film Exchange.

Q. Was that the company in which Mr. Karson, of Philadelphia, was also interested? A. Yes, sir.

Q. You were not here yesterday, when Mr. Karson testified, were you? A. No, sir.

Q. Have you read to-day, at my request the testimony which he gave? A. I did. 3

Q. You were familiar with the circumstances attending the cancellation of the license of your company in February, 1909? A. Yes, sir.

Q. Please state whether or not Mr. Karson's account of that matter is in accord with your recollection of the facts.

Mr. KINGSLEY: I object to the question, as calling for a conclusion of the witness, as incompetent, immaterial and irrelevant, and not the proper method of proving any of the issues involved in this case. 4

Mr. CALDWELL: Let the witness state his own version of the matter.

A. Yes, sir.

By Mr. GROSVENOR:

Q. Mr. Lessy, I show you a letter, dated February 26th, 1909, on the letterhead of the Motion Picture Patents Company, addressed to the Philadelphia Film Exchange, signed

1    "Motion Picture Patents Company, by D. Macdonald, General Manager." Please state whether that is a letter received by your company, about the time stated on the letter from the Motion Picture Patents Company? A. Yes, sir; this letter, we received it.

Q. Was that the notice of cancellation? A. Yes, sir; that was a confirmation of the telegram.

Q. Received on the same day? A. Yes, sir.

Mr. GROSVENOR: I offer it.

2      The paper referred to was marked by the Examiner, "Petitioner's Exhibit No. 214," and is as follows:

**Petitioner's Exhibit No. 214.**

**MOTION PICTURE PATENTS COMPANY**

80 Fifth Avenue, New York City

(Officers listed.)

February 26th, 1909.

3      Philadelphia Film Exchange,  
1229 North 7th Street,  
Philadelphia, Pa.

Dear Sirs:—

Today we telegraphed you as follows:—

"February 26th, 1909.

Philadelphia Film Exchange,  
1229 North 7th Street,  
Philadelphia, Pa.

4      We hereby notify you that we will terminate our exchange license agreement with you on March fifteenth, nineteen hundred and nine.

**MOTION PICTURE PATENTS COMPANY,**

By J. J. Kennedy,  
Treasurer."

(Repeat this message)

(Chge. M. P. P. Co.)

We hereby confirm our notice to you that we will ter-

minate all our exchange license agreements with you on the 1  
fifteenth day of March, 1909.

Yours very truly,  
MOTION PICTURE PATENTS COMPANY,  
By D. Macdonald,  
General Manager.

DM/H.

By Mr. GROSVENOR:

Q. Mr. Lessy, this exhibit (No. 214), dated February 2  
26th, 1909, states that your license agreement will be terminated March 15th, 1909. I show you a letter, dated February 27th, 1909, on the letterhead of the American Mutoscope & Biograph Company. Please look at that, and state whether that was a letter received by you about the time stated on the letter from the Biograph Company? A. Yes, sir; this was a letter received the following day, notifying us that they are not shipping any more films.

Mr. GROSVENOR: I offer it.

The paper referred to was marked by the Examiner, Petitioner's Exhibit No. 215, and is as follows: 3

**Petitioner's Exhibit No. 215.**

AMERICAN MUTOSCOPE AND BIOGRAPH COMPANY

11 E. Fourteenth St., New York, N. Y.

February 27th, 1909.

Philadelphia Film Exchange,  
1229 North Seventh St.,  
Philadelphia, Pa.

4

Gentlemen:—

We beg to advise that owing to the cancellation of your license agreement by the Motion Picture Patents Company, we are not forwarding you films of our Monday's release or future issues.

Very truly yours,  
AMERICAN MUTOSCOPE & BIOGRAPH CO.  
J. V. W.—D. W.



1    By Mr. GROSVENOR:

Q. Now, I show you a telegram signed Motion Picture Patents Company, addressed to Frank A. Fisher, Grand Amusement Company. Was that Frank A. Fisher, Grand Amusement Company, one of your customers? A. Yes, sir; that was one of our customers.

Q. Where did you get that telegram? A. This customer, when he got the telegram, came into the exchange, and he cancelled the service, and we asked him the reason why, and he showed us this telegram from the Motion Picture  
2    Patents Company, notifying him that the license of the Philadelphia Film Exchange is terminated, and therefore, he says, I just have to take care of my theatre, and I must make other arrangements.

Mr. GROSVENOR: I offer that telegram in evidence.

The paper referred to was marked by the Examiner, "Petitioner's Exhibit No. 216," and is as follows:

**Petitioner's Exhibit No. 216.**

3

**NIGHT MESSAGE.**

**THE WESTERN UNION TELEGRAPH COMPANY.**

—Incorporated—

(Part of telegraph form omitted.)

2p n c 34 Paid Night    1216am

SD New York, Feb 26-09.

Frank a Fisher

4    Grand Amusement Co., 5206-8 Market St Phila.

Today we notified Philadelphia film exchange that its license with this company will terminate March 15th 1909 after which date they will not be authorized to supply licensed film.

Motion Picture Patents Co.

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By Mr GROSVENOR:

Q. Did you come over to New York in connection with

the cancellation of your license, and see anybody at the Motion Picture Patents Company's offices on that matter? A. Yes, sir; I came over to New York, and I went to the Motion Picture Patents Company, at No. 80 Fifth Avenue, and I saw Mr. Macdonald, who was the general manager of the Motion Picture Patents Company, and I asked him the reason why our licenses are revoked, and he said, "Simply because we don't want to do business with you," was his reply, and he didn't give me any more information.

Cross examination by Mr. KINGSLEY:

Q. Did you come over with Mr. Karson? A. No, sir, I came by myself, when Mr. Karson came back from New York.

Q. Mr. Karson went first and you went second? A. Yes, sir.

Q. Were you the head of the firm? A. Yes, sir.

Q. Was Mr. Karson a member of the firm then? A. Yes, sir.

Q. Were you partners? A. Yes, sir.

Q. Were you the chief partner? A. Well, the fact is we were equal partners.

Q. Now, you kept right on doing business, didn't you? A. Well, I kept on, yes.

Q. And you bought independent films? A. There was not any independent film at that time.

Q. You rented independent films and imported films? A. We did later on. We bought from Chicago, Mr. Murdock, we bought independent films.

Q. How much later on? A. I can't recollect just now; a few weeks later, I guess.

Q. Did your firm sign the license agreement with the Motion Picture Patents Company? A. Yes, sir.

Q. Was there a clause in this agreement providing for cancellation without cause upon two weeks' notice? A. I can't recall just now.

Q. I show you a copy of the Motion Picture World of March 20, 1909, which contains a half-page advertisement of the Philadelphia Film Exchange, and ask you if that is an advertisement put out by your firm? A. Yes, sir.

- 1 Mr. KINGSLEY: I offer it in evidence.  
The paper offered in evidence was marked by the Examiner as "Defendants' Exhibit No. 36," and is as follows:

**Defendants' Exhibit No. 36.**

**PHILADELPHIA FILM EXCHANGE.**

New York, 28 East 23d St. Philadelphia, 1229 North 7th St.

- 2 LISTEN ! ! ! We are prepared to supply you with  
MR. EXHIBITOR the Best Films issued by all the manufacturers of the Trust up to March 15th, 1909. Since that date we have bought every Independent Reel issued, and intend to continue buying 18 to 20 reels each and every week: and will add to our purchases as the output increases. We have been in the Film Business for the past six years, handling New Films Only, and assure you of a service that cannot be excelled by any Exchange in this country.

**REASONABLE MODERATE PRICES  
A DEAL**

- 3 You Get What You Pay For. We Serve You Right.  
Get Our Live Wire Service or We Both  
Lose Money.

**PHILADELPHIA FILM EXCHANGE**

New York—"Hello" 1013 Gramercy  
Philadelphia—Keystone Park 461  
We Will Shortly Open Exchanges in Harrisburg and Baltimore.

4

---

By Mr. KINGSLEY:

Q. Did you have any written contract with the American Mutoscope & Biograph Company? A. I can't recall.

Q. As a matter of fact you did not have, did you? A. I really don't remember.

Q. I show you a copy of the Motion Picture World, of March 27th, 1909, and call your attention to a half-page advertisement, at the top of the page 386. Is that an ad-



vertisement of your firm? A. (examining book): It is. 1  
After we were cancelled we opened another branch in Balti-  
more, and New York.

Mr. KINGSLEY: I offer this in evidence.

The paper referred to was marked by the Ex-  
aminer, "Defendants' Exhibit No. 37," and is as  
follows:

**Defendants' Exhibit No. 37.**

A DEAL IT SERVES YOU RIGHT A DEAL 2

**PHILADELPHIA FILM EXCHANGE**

1229 North 7th St.	28 East 23d St.
Philadelphia, Pa.	New York City
Phone, Keystone, Park 461	"Hello" 1013 Gramercy.

**GET THE MONEY, BOYS**

Get On Our Live Wire Service, We Will Do the Rest.  
The Best Service in America is Knocking at Your  
Door. Wake Up!

We buy absolutely New Goods, Keep Our Promises.  
Our First and Second run is open. Hurry up and get  
on. And Say! Drop a postal for a Good Live Cata-  
logue of 1,000 good subjects.

Baltimore	New York City	Philadelphia.
8 Light St.	28 E. 23d St.	1229 N. 7th St.

A DEAL A DEAL

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By Mr. KINGSLEY:

Q. I show you a half-page advertisement in the Motion  
Picture World, of April 3rd, 1909, at page 417. Is that an  
advertisement put out by your firm? A. Yes, sir.

Mr. KINGSLEY: I offer that in evidence.

The paper referred to was marked by the Ex-  
aminer, "Defendant's Exhibit No. 38," and is as  
follows:

1 **Defendants' Exhibit No. 38.**

A DEAL IT SERVES YOU RIGHT A DEAL

## PHILADELPHIA FILM EXCHANGE

1229 North 7th St.

28 East 23d St.

Philadelphia, Pa.

New York City

Phone, Keystone, Park 461

"Hello" 1013 Gramercy

## GET THE MONEY, BOYS

2 Get On Our Live Wire Service, We Will Do the Rest.  
The Best Service in America is Knocking at Your  
Door. Wake Up!We buy absolutely New Goods, Keep Our Promises.  
Our First and Second run is open. Hurry up and get  
on. And Say! Drop a postal for a Good Live Cata-  
logue of 1,000 good subjects.

Baltimore

New York City

Philadelphia

8 Light St.

28 E. 23d St.

1229 N. 7th St.

3 A DEAL A DEAL

---

By Mr. KINGSLEY:Q. In both of these last two advertisements you adver-  
tised that you had one thousand good subjects, did you not?  
A. Yes, sir.Q. And you opened branches in Baltimore, and Phila-  
delphia, immediately after the cancellation? A. Yes, sir.4 Q. And you advertised that you bought absolutely new  
goods, and that you kept your promises, did you not? A.  
That I bought new film after the license was cancelled?

Q. You did buy new film? A. Yes, sir.

Q. After the license was cancelled? A. I did not buy it.

Q. But you advertised that you did? A. Yes, sir; that  
was a matter of business.

Thereupon, JAMES J. LODGE, a witness subpoenaed on behalf of the petitioner, of lawful age, duly sworn, deposed as follows: 1

Direct examination, by Mr. GROSVENOR:

Q. Mr. Lodge, in 1908, the middle of 1908, and the latter part of that year, were you engaged in the business of manufacturing motion pictures? A. Yes, sir.

Q. What was the name of the company with which you were connected? A. George Melies Manufacturing Company. 2

Q. Were you familiar with the names of the manufacturers making motion pictures in the United States at that time, and were you acquainted with the persons who were important officers of those companies? A. The majority of them, yes.

Q. Were you or not present at a meeting on December 18th, 1908, of the various manufacturers, at the offices of the Edison Company at 10 Fifth Avenue, New York? A. I was present as a licensee of the Patents Company.

Q. Are you or not acquainted with the names of the different manufacturers that concluded contracts or licenses with the Patents Company on that day? A. Yes, sir. 3

Q. Were you or not present when those several contracts or licenses were signed? A. I was present, yes, sir.

Q. Do you remember the names of the companies that signed contracts on that day, and at this meeting at which you were present? A. It was announced by Mr. Dyer that all were present, and although I may not remember all the names in sequence, I know them and I could name them right now, yes, those who were present at the time.

Q. Please do so. A. Representatives of the Biograph Company, Vitagraph Company, Lubin Company, Selig Polyscope Company, Spoor, Essanay Company, Edison Company, George Melies Company, which was myself, and one or two new organizations that were admitted that signed contracts at the time, but I can't right now specify the exact names. 4

Q. Any representative of Pathe Freres? A. Yes, Mr. Berst.

Q. Any representative of Kalem Company present? A. Yes, to the best of my knowledge, I think Mr. Frank Marion was there.



1 Q. Was Mr. Kleine there? A. Now, that is a point I couldn't positively swear to right now, but my impression is, he was.

Q. Who was present representing the Biograph Company?

A. Mr. Marvin was there, and Mr. Kennedy was there.

Q. Who was present representing the Edison Company?

A. Mr. Scull was there and Mr. Dyer was there.

Q. Who was representing the Essanay Manufacturing Company? A. Mr. Spoor was there.

Q. Who represented the Kalem Company? A. Mr. Marion — Frank Marion.

2 Q. Who represented the Lubin Company? A. Mr. Lubin himself.

Q. Who represented the Selig Polyscope Company? A. Mr. Selig himself.

Q. Who represented the Vitagraph Company? A. Mr. Smith, to the best of my belief.

Q. Albert Smith? A. Yes, sir.

3 Q. State to the best of your recollection what was done at that meeting? A. Each one of us was handed a printed form of the contract or license, expected to be gone over and signed at that meeting. After looking them over Mr. Dyer started to read each paragraph of the license or contract in sequence, and asked the different members present to follow him in reading them, and that it was open to any suggestions or any objections, that anyone of those present should make to what he read. After a time he assigned that task of reading to Mr. Scull, who continued it in the same way until the finish. There were no objections that I remember now by any member present, and finally Mr. Dyer asked if everyone was willing to sign, and some one suggested that we should adjourn until the next day, when  
4 he, Mr. Dyer, stated that he was very anxious that all the contracts should be signed then and there, and the affair closed up that night before adjourning or dispersing. We left there at eight o'clock, and then before leaving, of course, we all in turn were asked to come up and sign the contracts in duplicate, which we all did, one after the other, at his request.

Q. You may state whether or not each of those so-called license agreements was signed in the presence of all the other manufacturers? A. Each contract was signed in the presence of all the other manufacturers, as well as also in the presence of the officers of the Edison Manufacturing Com-

pany, and of the Motion Picture Patents Company, who were present at the time. 1

Q. Had you been advised prior to this meeting of December 18, 1908, of the plan of these various manufacturers taking out licenses of a uniform character from one company?

A. I received a copy of the prospective amalgamation of the two forces, the Biograph Company and the Edison forces, and an outline of the agreement, I think, to the best of my knowledge, some four weeks or six weeks prior to the meeting, for us to study out and make suggestions if we felt inclined to, as to any matter, or any other suggestions that we wished to make about the matter. 2

Q. Whom did you receive this from? A. Mr. Frank Dyer.

Q. State whether or not anything was said by any of the manufacturers in regard to the two dollars a week royalties to be collected, and the purpose of collecting same, and for what purpose the money so collected was to be used, if anything on that subject was said? A. Well, under the contract that we all signed that evening there were twenty-two per cent. of it stipulated—I think it was that, but I am not positive of it—to be distributed amongst us manufacturers.

Mr. CALDWELL: I object to the witness stating the contents of the contract; it is in evidence. 3

By Mr. GROSVENOR:

Q. Go ahead, Mr. Lodge, and state everything you recollect on that subject. A. And the balance was to form, in the words of some of the members present, a gigantic fund—

Mr. KINGSLEY (interrupting): I object to the witness' statement, unless he can name the person or manufacturer who made that statement. 4

The Witness (continuing): —for legal purposes, for litigation, so as to avoid the necessity of the individual manufacturers being called upon to contribute to that end.

By Mr. GROSVENOR:

Q. Do you recall who of those present spoke on that subject of royalties? A. Well, there were only two or three present that I was on actual speaking terms with at the time,

1 so I heard it generally spoken of, but Mr. Berst was the one that I was depending upon for a lot of information I received at that meeting.

Q. Now, were you referring to the two dollars a week royalty from the exhibitors, or to the so-called film royalties?

A. The two dollars a week from the projecting machine royalties; and Mr. Spoor also mentioned the fact as to the fund created for purposes of litigation.

2 Q. Was anything said at this meeting on December 18th, by any of the manufacturers present, on the subject of the power of the new company, or the position in the trade that it would have, and, if anything on that subject was said, please state what, and by whom, to the best of your recollection? A. Only in a general way, I can say that it was made a big point of by everybody, the advantage to be gained by the amalgamation of the two concerns, and that it would completely act as giving the concern so created control of the situation, film situation.

Mr. CALDWELL: I move to strike that answer out as vague and uncertain.

3 The Witness: Mr. Spoor, and Mr. Selig, and Mr. Berst, and Mr. Marion, I can say, spoke as to that, as to this fact.

Cross examination by Mr. CALDWELL:

Q. Mr. Lodge, when did the George Melies Company commence business? A. When did it commence business?

Q. Yes. A. Well, in a way we commenced business, I should judge, about May 1909. In our former testimony, Mr. Caldwell, I cannot recall the exact date without refreshing my memory with the evidence given in our extended suit.

4 Q. Now, isn't it a fact, Mr. Lodge, that about May, 1909, the George Melies Company executed a lease of all its property to the Phoenix Company? A. After being refused a license by the Motion Picture Patents Company—the delivery of the license—we saw a long suit in front of us, and in order to pay lawyers we subleased the plant to the Phoenix Company.

Q. Do you call that commencing business? A. No, sir.

Q. With the Phoenix Company— A. Oh, no.

Q. I asked you the question when the George Melies Com-



pany commenced business, and about May, you said? A. Yes. It was just prior to that that a couple of films were offered for sale, and refused to be purchased by the Motion Picture Patents Company, and that being the case, we had to resort to other manufacturers to get some evidence to defend ourselves.

Q. You have stated that the George Melies Company was a manufacturer of motion pictures in your direct examination. Is that correct? A. In this record?

Q. Yes. A. Yes, sir; he was a manufacturer—we were there as a manufacturer.

Q. I asked you when the George Melies Company commenced to manufacture film? A. The George Melies Company under the Patents license?

Q. Under any license? A. We conformed to the Motion Picture Patents Company agreement by having some films sent us by George Melies, the prince of them in this country, and the Motion Picture Patents Company refused to buy them.

Q. You never manufactured any films under the George Melies Manufacturing Company? A. No, sir; as a manufacturer under the license, we did not do any actual manufacturing, but we complied with the conditions of the license.

Q. In point of fact, did you ever have a license from the Patents Company? A. Signed by me, and signed, I believe, by the officers, but not delivered, promised to be delivered by Mr. Dyer, who sent me on my way to Chicago with the promise, but never physically delivered, but I believe is in evidence in our little unpleasantness that we just got through with.

Q. The Government is mistaken in its petition where it alleges the George Melies Company was an important manufacturer of film in the year 1908? A. That depends on the construction of that sentence and how you look at it.

Q. You have just stated that you never manufactured any film under this company. A. In the concrete, we did not, but as a matter of fact—do you wish me to say we did not manufacture here?

Q. I wish you to state what the facts are. A. We did not do so.

Q. You did not do so? A. No, sir; not physically manufacture.

Q. And the films you say you attempted to lease in Chicago were really films that were manufactured by Mr. George

1 Melies, in France, and sent to his brother, Gaston Melies, in New York; that is the fact? A. The negatives were made in Paris, and the positives were made in the City of Chicago, by the George Melies Company, and offered for sale, and refused.

Q. Then the extent of the business consisted in offering these two films for sale, or lease? A. Yes; that is as far as we got before the Patents Company clipped us.

Q. Now, you brought suit against the Motion Picture Patents Company, and the Edison Manufacturing Company, did you not? A. Yes.

2 Q. And when did you bring that suit? A. I think that was some time in the middle of 1909, or was it before that? But you are asking the question; pardon me.

Q. To the best of your recollection? A. I could not swear to the date right now without refreshing my memory—some time in 1909.

Q. What was the nature of that suit? Do you remember in what court it was brought?

3 Mr. GROSVENOR: I object to this cross examination, except in so far as it may be for the purpose of showing that the witness is hostile to the defendant.

By Mr. CALDWELL:

Q. Do you remember in what court it was? A. The Federal Court, first, I believe, in Trenton, New Jersey.

Q. What was the relief that you asked in that action? A. We asked the Honorable Court to compel the defendants, the Edison Manufacturing Company and the Motion Picture Patents Company, to recognize us the same as any other of its licensees.

4 Q. In other words, it is in the nature of a bill for specific performance of an alleged agreement to give you a Patents Company license, is it not? A. No, sir.

Q. Didn't you ask in that bill that the license agreement which you claimed to have been executed, be delivered to you? A. Physically delivered, yes, but we claimed that it was executed and the minds met, as you lawyers say—

Q. (interrupting): In other words, you asked for a delivery of that license? A. And compel the Patents Company to recognize us and to treat us the same as other licensees.

Q. Now, the defendant in its answer claimed that you had obtained an assignment of the Melies Edison licenses by fraudulent representations, did it not? A. And something more; yes, sir. 1

Q. That was one claim? A. That was one.

Q. And the other claim was that there was a breach of a collateral agreement that you entered into with Mr. Dyer? And the Court found against you on that proposition, did it not? A. I never like to be disobliging; I like to answer all questions. But I presume I can answer counsel here in the way I see fit (turning to Mr. GROSVENOR)? 2

Mr. GROSVENOR: I think the question is immaterial.

The Witness: I have only one way of answering, and I do not believe it will be acceptable to our honorable Mr. Caldwell here. Because I can only answer it in the one way, Mr. Caldwell. As you are more familiar with these cases as a lawyer than I am as a layman—

Mr. CALDWELL (interrupting): I only asked you the question. 3

The Witness: Manufactured and unscrupulous testimony imposed upon the Court to such an extent that the Court denied us the relief we asked for. That is the only way I can answer that.

By Mr. CALDWELL:

Q. You testified in the case? A. I did, indeed, sir.

Q. And Mr. Melies testified? A. Indeed, yes.

Q. And there was a sharp question on the issue of fraud between your testimony on the one hand and that of Mr. Melies, Mr. Dyer, Mr. Selig and Mr. Spoor on the other, was there not? A. That is the preponderance of testimony against your humble servant. 4

Q. You have read the opinion of the Circuit Court of Appeals in that case, haven't you, Mr. Lodge? A. No, sir.

Q. Never read it? A. Never read it. My lawyer read it for me.

Q. You were very much interested in the result of that



1 case? A. In the result I was, but not as to the additional remarks of the Honorable Judge.

Q. Didn't you know that the United States Circuit Court of Appeals unanimously found that there had never been any contract for a license between your company and the Motion Picture Patents Company? A. I don't think they were quite as pointed in their remarks as that, were they, Mr. Caldwell?

2 Q. They were. You knew that the Court found in that case as follows: "The equitable relief sought by complainant was properly refused by the Chancellor, on the ground of the false and fraudulent representations made by Lodge on behalf of the complainant to the Edison Company." You knew that, didn't you? A. I know it now; I believe you.

Q. You know also that the Court found that those promises were made by you with no intention of keeping them, don't you? A. I know also that the defendants made a ruling in making the record of the case that they wanted a rescission of the contract, which the Honorable Court did refuse you, and I still have the license and the contract.

3 Q. You know also that the Court found as follows: "This evidence convicts Lodge of making promises on behalf of the complainant with the then present intention of violating them?" A. Which was the sworn testimony of several of the parties, where they claimed an oral promise of mine which I never gave, and which was perjured testimony on the part of the defendants.

4 Q. You knew that that was the unanimous finding of the three judges that passed upon the questions at issue in that case? A. Well, three judges? I will take your word for it. I did not know how many judges there were. I know we got the worst of the case, the same as a good many more people who ever fought against the Patents Company.

Q. Mr. Lodge, in what other litigations have you testified against the Patents Company or the other defendants in this case? A. With all due respect to you, Mr. Caldwell, and other gentlemen present, unless counsel here advises me to continue this, I would rather decline to go any further or deeper into the case.

Mr. GROSVENOR: What is the question?

Mr. CALDWELL: I think the question is clearly

admissible for the purpose of showing bias on the part of the witness. 1

Mr. GROSVENOR: I have no objection to the question if you will read it.

The Examiner reads the question as follows:

"Q. Mr. Lodge, in what other litigations have you testified against the Patents Company or the other defendants in this case?"

Mr. GROSVENOR: I think you had better answer the question to the best of your recollection.

The Witness: Yes, sir. The case in litigation between the Fox Company—I don't know the name of the case, and the Patents Company; and also Austin Fynes against the Patents Company for services which they refused to pay him for, and I was one of the witnesses. 2

By Mr. CALDWELL:

Q. Did you volunteer your testimony in the suit of the Greater New York Film Rental Company against the Patents Company and others? A. I was asked if I would testify. They approached me and asked me if I would testify or would not testify to certain facts, and I said I would be perfectly willing to testify as to what I knew of the exact circumstances and truth of the matter. But I did not make the initial movement. 3

Q. Did you testify in the case of the Chicago Film Exchange? A. Yes; another case. Not in Chicago.

Q. In Washington? A. In Washington.

Q. Did you volunteer to testify in that case or were you subpœnaed? A. I was not subpœnaed, so if that means voluntarily, why, I did not wait. Evidently not in a frame or mood to wait for a subpœna when I was asked to come up and testify as to facts. 4

Q. Are you under subpœna in this case? A. Absolutely, yes, sir.

Q. You do not feel very kindly to the Patents Company, do you? A. Not any more kindly than a man would be that caught a man that stole a pocketbook out of his pocket. That is about the way I feel.

Q. Now, you made an affidavit in the Greater New York Film Rental case in which you refer several times to meetings

1 of the licensed manufacturers, and what transpired at those meetings. I wish you would tell me any meeting of the licensed manufacturers that you ever attended, Mr. Lodge? A. I would rather—in fact, I will decline to answer that question. It does not bear on this case at all, and unless I refresh my memory by looking over the testimony, I could not answer that question.

Q. I will permit you to do that. A. If the counsel present will allow me to continue this, I will do so.

2 Q. There is your affidavit in that case, if you will look it over and refresh your memory.

Mr. GROSVENOR: I object to the last question except in so far as it refers to the meeting of December 18th, which was testified to by this witness on direct examination. As I recall the direct examination, I made no reference to any other meetings, therefore any cross examination as to what may have transpired at any other meetings is improper.

3 Mr. KINGSLEY: This question goes directly to the credibility of the witness, and is therefore a material and proper question. Counsel is testing his credibility.

By Mr. CALDWELL:

Q. Have you refreshed your recollection now, Mr. Lodge, by reading this affidavit? A. Yes. As much as a man of my age can do so at this time.

4 Q. You have sworn here as follows: "At meetings of the licensed manufacturers and the Patents Company preceding the formation of the General Film Company, it was stated that every licensed manufacturer would have the privilege of becoming a subscriber for stock of the General Film Company, and my understanding is that every one of the licensed manufacturers except perhaps the Melies Manufacturing Company, did acquire stock in the General Film Company." Now, can you name any meeting of the licensed manufacturers, Mr. Lodge, at which you were present, at which that subject came up for discussion? A. I could not name any one. I only know that it was discussed.

Q. How do you know it? Were you there? A. I was present myself and also the president of my company was there and reported it.



Q. Were you ever present at any meeting of the licensed manufacturers of the Motion Picture Patents Company?

A. At the one that we signed the license that night. That was the only one.

Q. The only meeting that you ever attended, then, was the meeting of December 18th, 1908? A. I could not before. Because there was no Motion Picture Patents Company until that night.

Q. That was the only meeting, then, that you ever attended at which the licensed manufacturers were present?

A. Let me see—none after. But the meetings of the Edison Motion Picture Patents and the previous licensees, I attended two or three of them.

Q. You are speaking in this affidavit of the licensed manufacturers of the Motion Picture Patents Company at which discussions with reference to the formation of the General Film Company took place, as you say. Now, I want to know what meetings of the licensed manufacturers of the Motion Picture Patents Company you attended, at which that subject was discussed? A. Two or three of them, of the Edison manufacturers, which was the same in personnel as the Motion Picture Patents Company, and technically I suppose I am wrong there, but it was a meeting of the same licensees; but it was that first and only meeting that ever I attended of the Motion Picture Patents Company, because I could not attend them before because it was created that night.

Q. Do you mean to say that you attended some meetings of the Edison licensees at which the formation of the General Film Company was discussed? A. Undoubtedly. The prospective formation of it, yes, sir. A year before I knew about it, and was so informed by my president of my company. A year before the General Film Company was created I had heard through the president of my company, Mr. Melies, that such was to be the case.

Q. I am not asking you about that. A. I am volunteering that.

Q. I am asking you when you attended any meeting of the licensed manufacturers at which that subject was discussed? A. The exact date I could not tell you, but at what meetings,—a couple of them—the meetings previous to this one, it was spoken of.

Q. You are ready to swear, Mr. Lodge, that you attended some meeting of the licensed manufacturers prior to De-

1 cember 18, 1908, at which the subject of the formation of  
the General Film Company was discussed? A. Not as the  
general discussion of the meeting, but amongst the different  
members, and what it was proposed to do. Undoubtedly  
I can swear, and will do so.

2 Mr. CALDWELL: I offer in evidence the opinion of  
Judge Gray, concurred in by Justices Buffington and  
MacPherson, United States Circuit Court of Appeals  
for the Third Circuit, in the case of George Melies  
Company, Appellant, against Motion Picture Patents  
Company, Edison Manufacturing Company and  
others, at the October Term, 1912. And I state that  
I offer it not only for the purpose of discrediting  
this witness, but also that it relates to matters which  
have been brought out in his direct examination.

3 Mr. GROSVENOR: I object to that as imma-  
terial, and the alleged purpose of discrediting the  
witness is farcical, in view of the fact that  
this suit was not referred to on the direct examina-  
tion, and relates entirely to different matters, namely,  
the question was in that suit whether or not the  
Patents Company had given a license to the Melies  
Company or the company in which this witness was  
interested, and therefore it cannot have any bearing  
on the suit.

4 Mr. CALDWELL: He has testified that he had a  
license from the Motion Picture Patents Company,  
and as the unanimous decision of the Circuit Court  
of Appeals is that he did not have a license and that  
there never was any obligation, legal or otherwise,  
on the part of the Patents Company to give him a li-  
cense.

Mr. GROSVENOR: In view of the fact that part of  
that affidavit has been read from in the cross exami-  
nation, I will offer in evidence the whole of the  
affidavit.

Mr. CALDWELL: The affidavit is objected to as be-  
ing totally irrelevant and incompetent; I merely re-  
ferred to a part of the affidavit for the purpose of  
testing the accuracy and memory of the witness; and  
it is further objected to on the ground that it un-  
necessarily encumbers the record in this case. I

further object to the paper in question, because the witness is now on the stand and if the matters referred to in that affidavit are material and relevant, the proper way to prove them is by examining the witness.

The affidavit offered is marked Petitioner's Exhibit No. 217, and is as follows:

**Petitioner's Exhibit No. 217.**

**Affidavit of James J. Lodge, Read in Support of Motion.**

Affidavit of James J. Lodge—Read in Support of Motion.

SUPREME COURT,

NEW YORK COUNTY.

GREATER NEW YORK FILM RENTAL COMPANY,

Plaintiff,

*against*

MOTION PICTURE PATENTS COMPANY and others,

Defendants.

STATE AND COUNTY OF NEW YORK—SS.:

JAMES J. LODGE, being duly sworn, says:

I live in Chicago, Illinois, and am Vice-President and General Manager of George Melies Manufacturing Company, a corporation organized under the laws of the State of Illinois, and carrying on business in Chicago.

The defendant Melies Manufacturing Company is a New York corporation, formed about July, 1910, by Gaston Melies, who was and still is President of George Melies Manufacturing Company. He offered his resignation as such President, but our Company refused to accept it.

Said Gaston Melies, and his son, Paul Melies, who was



- 1 an employe of our Company left that Company in the Summer of 1910, induced, as I have always believed, by the Motion Picture Patents Company and others, and organized the Melies Manufacturing Company.

My Company, the George Melies Manufacturing Company, was one of the original "licensed manufacturers" under license granted by the Motion Picture Patents Company in or about December, 1908.

- Such a license was signed by the Patents Company and by myself in behalf of my company, and nothing remained but to attach the seal of the Patents Company. The license was left with Frank L. Dyer, President of the Patents Company, for the purpose of having the seal of his company attached and on his promise to have the seal attached and forwarded to me in Chicago. The license never was forwarded to me, and I saw such license, for the first time since its execution, about 12 months ago, in the course of taking testimony in a suit brought by my company against the Motion Picture Patents Company to compel the Motion Picture Patents Company to deliver the license and specifically perform its undertakings therein. That suit is pending in the United States Circuit Court for the District of New Jersey.

- The licenses granted by the Patents Company to the so-called licensed manufacturers were identical in terms. One of the provisions of each of those license agreements was that the licensed manufacturer covenanted not to supply film to any film rental agency which was not licensed by the Motion Picture Patents Company. It was agreed among all the licensed manufacturers and the Patents Company, at the time when the license agreements were made, that the licensed manufacturers were under obligation to and would furnish the film manufactured by them, respectively, to all film rental agencies in the United States that were licensed or should be licensed by the Motion Picture Patents Company. This was a frequent subject of discussion at meetings of the licensed manufacturers with officers of the Motion Picture Patents Company. One or more officers of the Patents Company, usually Mr. Frank L. Dyer, the President, or Mr. Marvin, the Vice-President, or Mr. Kennedy, the Treasurer, were almost always present at meetings of the manufacturers.

The agreement and obligation of the licensed manufac-

turers to furnish film to all licensed film rental agencies was just as distinct and well understood as their written obligation in their license agreements not to furnish their film to any rental agency that was not licensed by the Patents Company.

1

Immediately after, as I understood, my company had been licensed by the Patents Company, it received from the Patents Company a list of licensed rental agencies, with instructions to supply film to no other agencies, and from time to time thereafter received revised lists showing changes in the licensed rental agencies, some of the licensed agencies having been eliminated, and our instructions were not to supply any film to such agency whose license had been cancelled.

2

For a considerable time before the formation of the General Film Company, the project of organizing such a company for the purpose of controlling the business of supplying films to licensed exhibitors was discussed at meetings of the licensed manufacturers and the Patents Company, and it was agreed that such a corporation should be formed for that purpose, and that the licensed film rental agencies throughout the United States should be absorbed by the new corporation to be composed of or controlled by the licensed manufacturers.

3

The General Film Company was accordingly organized under the laws of the State of Maine in the spring of 1910, and my information is that it has absorbed or eliminated every film rental agency in the United States, except the Greater New York Film Rental Company.

At meetings of the licensed manufacturers and the Patents Company preceding the formation of the General Film Company, it was stated that every licensed manufacturer would have the privilege of becoming a subscriber for stock of the General Film Company, and my understanding is that every one of the licensed manufacturers, except perhaps the Melies Manufacturing Company, did acquire stock in the General Film Company, either in its own name or in the name of some officer. The understanding was that the licensed manufacturers were to share equally in the stock of the General Film Company. The officers and directors of the General Film Company, since its organization, have been made up of officers or directors or representatives of the licensed manufacturers, and the General

4

1 Film Company, ever since its organization, has been and still is completely controlled by the licensed manufacturers, and is simply the licensed manufacturers in a single corporate form. I do not know whether the Patents Company actually owns or controls any stock in the General Film Company, but the relations between that Company and the General Film Company, and, indeed, among the Patents Company, the licensed manufacturers and the General Film Company, is of the closest character, and they constitute a single control and are practically a single organization.

2 The talk had over and over again at meetings of the licensed manufacturers and the Motion Picture Patents Company was to the effect that the film rental agencies and the exhibitors were making a disproportionate profit out of their business and realizing more proportionately than the manufacturers, and that that was a condition which must be remedied by getting control of the supply of film into the hands of the manufacturers and the Patents Company by means of the organization of such corporation as the General Film Company, and that such corporation when organized would be in position to change the rates for supplying film and exact a rental in proportion to the profits made by the various exhibitors.

3 From the time when the combination between the Patents Company and the licensed manufacturers was first made in December, 1908, the intention has been unswervingly to obtain the exclusive control of and, so far as possible, monopolize every branch of the motion picture business, including the manufacture of the cameras with which the pictures are taken, the taking of moving pictures upon the negative films, the transference thereof to the positive films, the manufacture of the projecting machines, and the supplying of films to exhibitors.

4 The royalty of \$2 per licensed machine per week to be paid by licensed exhibitors, as provided in the license given by the Patents Company to the film rental agencies, was, by agreement between the licensed manufacturers and the Patents Company, divided as follows: A percentage—I do not remember whether it was 14 per cent. or 24 per cent.—was divided among all the licensed manufacturers in proportion to the quantity of negative film produced by them respectively; the balance of the fund was to be, and, to the best of my knowledge, was, turned over to the Pat-



ents Company for the payment of legal expenses involved in bringing and defending numerous litigations over patents and arising out of the various steps and proceeding taken by the Patents Company to secure control of the situation. 1

The officers of the Patents Company and particularly Mr. Dyer and Mr. Kennedy, repeatedly assured the licensed manufacturers that it was only a question of time when the Patents Company would control the whole situation, which would accrue to the benefit of all the manufacturers.

The projecting machines upon which the above-mentioned royalty of \$2 each per week is exacted from exhibitors, are, to a large extent, machines that had been bought outright by exhibitors or rental agencies during the past ten years or more, and the exaction of the royalty upon machines, which in many instances had for many years been owned outright by agencies or exhibitors, was simply an arbitrary exaction, illustrating the attitude which the Patents Company and the licensed manufacturers had taken toward the business. 2

J. J. LODGE.

Sworn to before me this 15th }  
day of December, 1911. }

WM A. YOUNG,  
Notary Public, No. 4,  
New York County. 3

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Cross examination, by Mr. KINGSLEY:

Q. Now, Mr. Lodge, as I understand it, you were present, according to the testimony, at a meeting on December 18th, 1908, of the licensed manufacturers? A. Yes, sir. 4

Q. After that meeting of December 18th, 1908, did you personally ever attend a meeting of the licensed manufacturers?

Mr. GROSVENOR: What do you mean by a "meeting?" Do you mean a formal meeting of the Board?

By Mr. KINGSLEY:

Q. Did you ever attend a meeting where the licensed manufacturers gathered together?

- 1 A. Yes, I did. On refreshing my memory, I did, sir.  
Q. What was the date? A. That I cannot say.  
Q. How long was it after December 18th, 1908? A. I think a very short time afterwards.  
Q. Where was the meeting held? A. In the same room that the December 18th meeting was.  
Q. And where was that? A. I don't know the number, but it was at the headquarters of the Edison Company down on Fifth Avenue.
- 2 Q. Will you tell me the names of the manufacturers that were present at this meeting regarding which you have just refreshed your recollection? A. No. There might have been one or two absent, but my impression is they were all present, with the exception probably of one or two. I could not swear which one or two those were. It was in reference to settling a matter that was in dispute between Mr. Dyer and myself. We tried to get together and compromise the thing. He wanted to fire one of my officers, and in justice to him, I wanted to retain him, and that and a couple of other meetings ended in smoke. That is what puts me in mind of it. I remember that meeting very distinctly.
- 3 Q. But that was the sum and substance of your attendance at the meetings of the manufacturers where they were assembled and congregated in the one room, was it not? A. Specifically, but—  
Q. (interrupting): That is all I am asking you. A. But I am telling you—  
Q. (interrupting): That is all I am asking you. A. I beg your pardon, sir.
- 4 Q. Were you friendly with Mr. Dyer and Mr. Kennedy in 1909? A. Not particularly friendly after the suit, no, sir.  
Q. When was the suit begun? A. Some time in 1909, as near as I remember now.  
Q. Do you know about what time? A. It might be April or May or somewhere around there. Or March.  
Q. At any rate, after that suit was begun, you were not very intimate with Mr. Kennedy or Mr. Dyer? A. I have never seen Mr. Kennedy since, and I have met Mr. Dyer half a dozen times since, and am and hope to be friendly with Mr. Dyer, and all the gentlemen, as far as that is concerned.  
Q. You have only met him two or three times since? A. Only about twice.

Q. And had no extended conversation with him? A. I had about fifteen minutes' conversation with him. 1

Q. Your conversations with Mr. Dyer since the suit was begun were meetings where you and he just happened to meet, were they not? A. No. Now you are referring to something else. No, sir.

Redirect examination by Mr. GROSVENOR:

Q. There was a question asked you on cross examination by Mr. Kingsley, which I think you did not give a complete answer to. Was there anything further which you wished to say in response or give explanation of your answers? A. Yes, I wish to say that besides— 2

Mr. KINGSLEY (interrupting): I object to anything that the witness may volunteer, and I ask that he simply answer questions that are asked him in due form.

By Mr GROSVENOR:

Q. I refer now to the question where you did not answer as I understand, all you wanted to in response to Mr. Kingsley's question when he interrupted you. Is there anything further you want to say? A. Yes, I did want to augment that answer by stating something else. 3

Q. Go ahead.

Mr. KINGSLEY: I object to anything else that the witness may say, as evidently being the voluntary declarations of a hostile witness, and as having been suggested by the Attorney General.

By Mr GROSVENOR: 4

Q. Go ahead. A. Besides this question of trying to compromise a situation, many things were talked over with the individual members of the organization that were there, and as to the prospects of the future, and some of them wishing me good luck, that they hoped we would get together, it was a big thing, and a general line of conversation in that direction, in which it was mentioned as to the prospective



- 1 and intended amalgamation and formation of the General Film Company.

Recross examination by Mr. KINGSLEY:

Q. When was this? What date was this? A. This was a meeting after December 18th, the exact date of which I don't know and could not swear to. It was during that extended period that I remained in New York and gave testimony. It is in the record.

- 2 Q. This was some time between December 18th, 1908, and the beginning of this suit to which you have referred? A. This is some time within two weeks afterwards.

Q. So that this meeting was in December, 1908? A. Within, I say—in about that period. Yes.

Mr. CALDWELL: I offer in evidence copy of opinion in case of George Melies Company *v.* Motion Picture Patents Company, *et al.*, in the United States Court of Appeals for the Third Circuit.

The paper referred to was marked "Defendants' Exhibit No. 39," and is as follows:

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4

**Defendants' Exhibit No. 39.**

1

IN THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE THIRD DISTRICT.

GEORGE MELIES COMPANY, Appellant,	No. 24.	2
v.		
MOTION PICTURE PATENTS COMPANY, EDI- SON MANUFACTURING COMPANY, GEORGE MELIES and GASTON MELIES, Appellees.	October Term, 1912.	

On appeal from the District Court of the United States for  
the District of New Jersey.

Before—GRAY, BUFFINGTON and MCPHERSON, Circuit Judges. 3

GRAY, Circuit Judge:

The George Melies Company, appellant and plaintiff below, is a corporation existing under the laws of the State of Illinois, and the Motion Picture Patents Company and the Edison Manufacturing Company, appellees and defendants below, are corporations organized and existing under the laws of the State of New Jersey.

The material facts, as set forth in the bill of complaint and answer, and appearing from the evidence are summarized as follows: 4

Prior to the 31st day of January, 1908, the defendant Edison Company was the owner of the entire right, title and interest in and to reissued letters patent of the United States, No. 12037, dated September 30th, 1902, and No. 12192, dated January 12th, 1904, appertaining to the motion picture art. Under these patents, the Edison Company had the exclusive right to manufacture, use and sell motion pictures

- 1 covered by said patents. As owner of these two letters patent, the Edison Company entered into an agreement with Gaston Melies, of New York City, acting for himself and as attorney for George Melies, of Paris, France, under date of January 31st, 1908, in which a license was granted to said Gaston and George Melies, subject to the covenants, conditions and stipulations contained in said agreement, to manufacture and use such number of cameras or apparatus embodying the invention of the reissued letters patent as might be necessary for the proper conduct of the licensees' business, and to manufacture, print, produce and sell positive motion pictures embodying said invention, and also to import and sell motion pictures manufactured by George Melies in Paris. A copy of this license agreement is annexed as an exhibit to the bill.
- 2

- 3 The license agreement provided, among other things, that the licensor might grant other licenses under said patents, not exceeding six in number, unless a greater number of such licenses was authorized by a plurality vote of the licensor and the licensees, on the basis of one vote for each 1,000 running feet of new subjects placed on sale by the licensee during the year preceding the taking of such vote. It also provided that the license thereby granted was personal to the said licensees, Gaston and George Melies. Prior to the date of the said license agreement with the said Melies brothers, similar agreements, containing the same conditions and stipulations, had been issued to six other licensees. The licensor, the Edison Company, was also itself a manufacturer and seller of the articles covered by the patent, and as appears by the evidence, the general business of manufacturing and selling the articles used in the moving picture art and covered by the Edison Company patents, was managed in the mutual interests of the said licensor and licensees at meetings periodically held by them for that purpose. As testified by the Vice President of the Edison Company, the licensor and licensees constituted "one happy family." It is in evidence that this general business was so conducted under an understanding that neither the Edison Company nor the licensees should make trade agreements with any particular exchange or individual dealer, by which such exchange or dealer should have an advantage over others in the same business. The reasons for such an understanding are obvious. Dealers, other than those with whom agree-
- 4



ments of the kind mentioned were made, would justly complain that they were being discriminated against, and the dissatisfaction thus created would tend to injure the general business of the licensor and licensees.

On June 19th, 1908, a written agreement was entered into between Gaston Melies, acting for himself and on behalf of his brother George, of the city of Paris, party of the first part, and J. J. Lodge, of the city of Albany, New York, of the second part. This agreement sets forth that the Melies brothers were in possession of certain licenses granted to them by the Edison Manufacturing Company of New Jersey, by which they were permitted to import certain articles pertaining to the moving picture art, from Paris, and to manufacture and sell and rent, under certain conditions and limitations, other articles covered by the patents belonging to the said Edison Company. It was then agreed between the said Melies and the said Lodge that the latter might organize and promote a corporation, to be known as the George Melies Company, for the purpose of carrying on, improving and extending the business as now conducted by the said Melies brothers in the United States, with ample and sufficient capital stock as shall enable said corporation to so carry on, improve and extend the said business, the said corporation to be formed under the laws of the state of Illinois. Said Melies agreed to permit the said Edison licenses to become the corporate property of the said George Melies Company, and to permit said company to carry on the business under all the benefits and conditions as set forth in said licenses during the life of the same, the said Melies to be known and appointed as President of the said Company by the duly appointed Board of Directors of said Company, when formed. That said Melies should have exclusive control of the mechanical production of all negative and positive films manufactured by said company, agreeing to apply to the best of his ability his experience and expert knowledge in the production of the same. It was further agreed that the names of the Melies brothers, as licensees in the Edison licenses thereinbefore referred to, should be cancelled by the Edison Manufacturing Company, and the name of the George Melies Company substituted instead thereof as soon as possible after the signing of the final contract by all concerned and the legal formation of the proposed Melies Company; and

1 the said Lodge agreed to form an incorporated company with the necessary capital as therein set forth. Afterwards, in July, 1908, the option under this agreement was extended so as to include Lincoln J. Carter, of Chicago, as a party with Mr. Lodge in the agreements.

2        On August 3rd, 1908, the formal and final agreement contemplated by the foregoing, between Mr. Carter and Mr. Lodge of the one part, and Gaston Melies and George Melies (the interveners in this case) of the other part, was entered into, in which Lodge and Carter obligated themselves to the formation of a corporation under the laws of Illinois, capitalized at \$75,000.00, to be known as the George Melies Company, to carry on all the business theretofore carried on by George and Gaston Melies, as licensees of the Edison Company, and which provided for the procurement by the Melies brothers of a substitution of the Illinois corporation, to be formed by the said Lodge and Carter, as licensee in the Edison licenses theretofore issued to the Melies brothers and in other respects conforming to the option agreement of June 19th. It was also agreed that Lodge and Carter should furnish at least "\$25,000 as cash capital to operate and carry on the business of the said company." On August 3 1st, the Melies Company was incorporated and on August 14th, formal application in writing was made, on behalf of Gaston Melies and his brother, to the Edison Company, asking its consent to the transfer of the two licenses held by the Melies brothers to the said corporation. Mr. Gaston Melies was subsequently advised by Frank L. Dyer, General Counsel and Vice President of the Edison Company, that a majority of the licensees had consented to substitute the George Melies Company as licensee in the licenses, instead of the Melies brothers, and that a new license agreement 4 would be issued as soon as informed of the incorporation of the George Melies Company.

      On September 18th, 1908, an instrument in writing, signed by the Edison Company, Gaston Melies and George and the Melies Company, was executed, formally transferring or re-issuing to the Melies Company the licenses theretofore granted to Gaston Melies and George Melies. Simultaneously with such transfer, an instrument in the form of a letter, addressed to J. J. Lodge, Vice President of the George Melies Company, embodying certain additional restrictions upon the Melies Company, was drawn

up in the office of the Edison Company, by the direction of Mr. Dyer, as Vice President, and was accepted in writing by Mr. Lodge, as Vice President of the Melies Company. This agreement, made coincidentally with the instruments of transfer of the licenses, is as follows: 1

“LEGAL DEPARTMENT.

Thomas A. Edison. Telephone 907 Orange.

Cable Address, “Edlegal, Orange”.

National Phonograph Co. Frank L. Dyer,

General Counsel. 2

Edison Business Phonograph Co.

Edison Manufacturing Co.

Bates Manufacturing Co.

Edison Storage Battery Co.

Edison Portland Cement Co.

Orange, N. J., Sept. 18, 1908.

J. J. Lodge, Esq.,  
Chicago, Illinois.

Dear Sir:— 3

The Edison Manufacturing Company agrees to and does transfer to the George Melies Company, a corporation of Illinois, the license dated January 31, 1908, granted to George Melies of Paris, France, and Gaston Melies of New York City, under reissued Letters Patent No. 12,037, and No. 12,192, only under the condition (accepted by the Directors of the George Melies Company) that the said license as to the George Melies Company, shall terminate, if, at any time during its life, the control of said Company shall pass from Lincoln J. Carter, of Chicago, and yourself or either of you, or such successors as may be accepted in writing by said Gaston Melies or George Melies, or (in the event of the death or incapacity of both of them) Paul Melies, or if Gaston Melies, for any reason, should cease to be the president and a director of the George Melies Company, and not be succeeded in such offices by his son, Paul Melies, as provided in “Paragraphs 1 and 5 of a certain agreement entered into by and between 4



1 George and Gaston Melies, J. J. Lodge and L. J. Carter, on the 3rd day of August, 1908.

Yours very truly,

Frank L. Dyer,

Vice President Edison Manufacturing Company.  
GDS/MJL.

The above named license is accepted by the George Melies Company under the conditions expressed above.

2 J. J. Lodge,  
Vice President George Melies Company."

3 It is admitted on both sides that, though the instrument transferring the licenses to the Melies Company was dated November 2nd, 1908, the true date thereof was September 18th, 1908, as shown by the date of the above coincident letter of that date. It is not denied that this letter must be read into the agreement of transfer and license, as part thereof, and that the license to the Melies Company was issued and taken under the conditions and limitations therein contained.

In the agreement of August 3rd, 1908, between the Melies brothers and Lodge and Carter, above referred to, providing for the transfer of the Edison licenses to the corporation thereafter to be formed, paragraph 8 is as follows:

4 "8. It is further agreed by both parties that at no time shall any person, or persons, firms or corporations, engaged in the manufacture or sale of films for moving pictures be allowed or permitted to hold stock in said corporation insofar as it lies in the power of the parties hereto to prevent the same."

The inference cannot be avoided from this and other evidence, that by this provision Lodge and Carter, for themselves and for the new corporation which they were to control, agreed that the understanding subsisting between the licensor and the licensees, heretofore referred to, that neither the Edison Company nor the licensees should make trade agreements with any particular exchange or individual dealer, by which such exchange or dealer should have an

1  
 advantage over others in marketing the product of any  
 manufacturer, was meant to be protected and its obligation  
 imposed upon the parties to the agreement. And there can  
 be no doubt from the testimony of Dyer, Vice-President of  
 the Edison Company, and that of George Melies, as well  
 as of Lodge himself, that it was perfectly understood that  
 the licenses taken over by the George Melies Company, which  
 Lodge was promoting, were taken over with all the restric-  
 tions, limitations, conditions and understandings that ob-  
 tained between the Edison Company and its original  
 licensees. In this respect, the Melies brothers were acting  
 as required by good faith on their part to the Edison Com- 2  
 pany; and it is apparent from the concluding sentence of  
 the letter of September 18th, above quoted, that Dyer, in  
 giving the consent of the Edison Company to the transfer  
 of the license to the George Melies Company, was familiar  
 with the agreement between Melies and Lodge, of August  
 3rd, 1908, above referred to, including paragraph 8, which  
 we have quoted.

It appears from the evidence that about September 10th,  
 1908, and pending the preparation of the papers necessary  
 to transfer the licenses, Mr. Dyer received a telegram from 3  
 William N. Selig, President of the Selig Polyscope Company,  
 and George K. Spoor, President of the Essanay Film Som-  
 pany, of Chicago (each of which companies was an Edison  
 licensee under agreements similar to that between the Edi-  
 son Company and the Melies brothers), protesting against  
 the sale of the stock of the George Melies Company to  
 persons engaged in the exchange or film renting business.  
 (These protesting licensees had not joined in the assent  
 given by the majority of the licensees to the transfer of  
 the Melies license to the new George Melies Company. Mr.  
 Dyer at once called the attention of Mr. Melies to this  
 telegram, and the latter stated that he knew nothing what- 4  
 ever about it. At Mr. Dyer's suggestion, Melies wired for  
 either Carter or Lodge to come on from Chicago, Lodge  
 being the Vice-President and Carter the Secretary of the  
 George Melies Company, which they together had promoted  
 and organized. Mr. Lodge came at once in response to the  
 telegram, with Mr. Gaston Melies, and called on Mr. Dyer,  
 who exhibited to Lodge a circular purporting to be sent  
 out by the George Melies Company to persons engaged in  
 the exchange or rental business, soliciting subscriptions to

- 1 the capital stock of the George Melies Company. Against this, Mr. Dyer protested and told Mr. Lodge that the Edison Licensees objected to rental exchanges becoming interested in the manufacturing business, and that they all considered it inadvisable for a manufacturer to be interested in a rental exchange. Mr. Lodge stated that the circulars were sent out by him without knowledge that they would be objected to, and that he would do all that he could to recall them, stating that only a few subscriptions to the stock of the Melies Company had been received, the amount thereof being \$700.—and that they should, if possible, be canceled.
- 2 He admitted that the circulars had been sent to various film rental exchanges, and promised Mr. Dyer that he would not accept any further subscriptions to the stock, and would endeavor to cancel those few that had already been accepted. As to this interview between Lodge and Dyer, not only Mr. Dyer testified but also George Melies, who of course understood how objectionable such transfers of stock were, both to the Edison Company and the Board of Licensees, and had inserted a prohibition of the same in his contract of August 3rd, 1908, with Lodge and Carter.

- 3 It is perfectly fair to assume, after reading this evidence, that on the faith of these promises by Lodge, the transfer agreement of September 18th, 1908, with the supplemental conditions contained in the letter of even date, was executed by Dyer for the Edison Company.

- 4 For some time prior to September 18th, 1908, the Edison Company had been engaged in litigation with the American Mutoscope and Biograph Company. To settle this extensive litigation, the Edison Company and the American Mutoscope and Biograph Company decided to form and promote a company, to be called the Motion Picture Patents Company, to which the patents belonging to each of the two companies should be transferred, and while there was no special agreement, there seems to have been an understanding, that new licenses should be issued by the Patents Company to such of the licensees of the Edison Company as were in good standing, and not in default to the said Company, and to certain licensees of the American Mutoscope and Biograph Company. Pursuant to this plan, the Patents Company was organized in November, 1908, and the patents of the Edison Company and of the American Mutoscope and Biograph Company were transferred to the Patents Company.



1  
In consequence of these transfers to the Patents Com-  
pany, on December 18th, 1908, a meeting was called in New  
York, of the manufacturing licensees with the representatives  
of the Patents Company and of the Edison Company, in  
order that the Edison licensees might apply for licenses from  
the Patents Company. The complainant was represented by  
Lodge, the Film Company by Spoor, and the Selig Company  
by Selig, the other Edison Company licensees having also  
representatives at the meeting. Soon after the meeting con-  
vened, Spoor and Selig told Mr. Dyer that they were informed  
that Lodge and Carter had sold the stock control of com-  
plainant company to Max Lewis, who conducted an inde-  
pendent exchange for buying, selling and renting moving  
pictures, and who also dealt in unlicensed films; that they  
had pooled the stock of the company under a trust agreement  
for a term of six years, and that they (Spoor and Selig)  
objected to the sale to Lewis, and objected to Lewis person-  
ally, on the ground that he was unfit to be a licensee, which  
he would practically be if he controlled complainant company  
and if a Patents Company license was issues to it. Dyer  
then called Lodge and Selig and Spoor into another room  
and informed Lodge what Selig and Spoor had said. The  
testimony as to these interviews between Lodge and Dyer  
on this and other occasions, is voluminous, but its perusal  
is thoroughly convincing that Lodge did not attempt, or at  
least not successfully, to deny the charge made by Selig and  
Spoor that he had sold a large block of stock to Max Lewis,  
the president of a film exchange and a dealer in rentals.  
It also appears that at this first interview, Dyer said to Mr.  
Lodge that complainant had imposed on the Edison Com-  
pany, and had not complied with the conditions under which  
the Edison Company license was assigned to complainant,  
had violated its promise that none of the complainant's stock  
would be sold to any one interested in the exchange business,  
that the pool or voting trust of the stock was a breach of  
trust or faith on complainant's part, and was a breach of the  
license assignment agreement of September 18th, 1908; that  
the Patents Company would not grant a license to complain-  
ant, and would only grant a license to such of the Edison  
Company licensees as were in good standing.

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After the return of Dyer, Selig, Spoor and Lodge to the  
meeting, the provisions of the proposed Patents Company  
license were then discussed. Mr. Dyer proposed the meeting

- 1 be adjourned to the next day, but some one suggested that the licenses be signed that evening and submitted to the directors of the Patents Company for ratification (it appearing that it was requisite that all the licensees should signify their assent by signing the new licenses to be issued by the Patents Company). Mr. Dyer stated that he had no objection to the proposed licenses being signed, on the understanding that they would not be binding until the directors of the Patents Company had ratified them. The meeting was finally adjourned until the next day, at the office of the Patents Company, at Orange, New Jersey. All the Edison Company
- 2 licensees attended the adjourned meeting, except complainant. The directors of the Patents Company resolved that the Patents Company would not grant the application of complainant for a license, but approved the applications of the other Edison Company licensees, and Patents Company licenses were issued to them about January 1st, 1909.

- The Secretary of the Patents Company took the licenses which had been signed on December 18th, to the office of the Patents Company, at Orange, and on December 19th, signed, as Secretary, all the proposed licenses, including that to complainant, and placed the company's seal on them. Dyer telephoned the Secretary not to sign and seal the proposed license to complainant, but he had already done so. The Patents Company did not deliver the proposed license to complainant. On the contrary, the complainant was eliminated from the list of licensed manufacturers, and the licensed exchanges were notified of this fact.
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- It afterwards transpired, as shown by the evidence, and especially by the testimony of Mr. Lodge himself, that at the very time, September 18th, 1908, when it was agreed to transfer the Edison licenses to the new Melies Company, organized by said Lodge, in reliance upon Lodge's statement in regard to the transfer of stock that had been reported to Mr. Dyer, and of his promise that no more should be transferred, and what was already transferred, if possible, recalled, he, Lodge, had been and was then in a deal with Max Lewis for the sale to him of 350 shares out of 750 authorized by the Melies Company, and a few days after September 18th and the signing of the papers on that day, he, Lodge, consummated this deal and afterwards obtained from him, in December, \$35,000 in payment thereof.
- 4

It will be remembered that Lodge, in his proposal to

Gaston Melies, to organize and promote a company to take over from the Melies brothers the Edison licenses, it was suggested and afterwards agreed that there should be a capitalization of the company of \$75,000, and that he, Lodge, would furnish immediately \$25,000 cash capital to start the operations of the company. It is evident from all the testimony that in this the Melies brothers were imposed upon, and that Lodge was acting as a speculative promoter, without means, and that he did not expect to advance any money of his own, but to raise it by such sales of the stock as he negotiated with Max Lewis, the President of a film exchange controlling a string of such exchanges across the country, in direct violation, not only of his understanding with Mr. Dyer on September 18th, but of Paragraph 8 of his written and final contract with the Melies Company, of August 3rd, 1908, above referred to. It also appears by the evidence that Lodge and Carter, early in November, 1908, caused complainant's entire capital stock of \$75,000 to be issued to themselves, in exchange for the assignment of the Edison license to the complainant company, so that the stock they sold to Max Lewis, or others, they got for nothing, without paying a dollar of their own into the treasury of the company. This transaction with Lewis, as we have shown, was known neither to Dyer or other representative of the Edison Company, nor to the Melies brothers, until the meeting on December 18th, called for the purpose of arranging for the issue of new licenses by the Patents Company to the Edison licenses, to which we have already referred.

It also appears from the evidence that after the transfer of these 350 shares to Max Lewis, and before the meeting on December 18th, an arrangement had been made by Lodge, Carter and Lewis, by which the stock transferred to Mr. Lewis, and that remaining in the hands of Carter and Lodge, was held by trustees in Chicago. This trust appears to have been a voting trust, to continue for six years, and as such manifestly took from Lodge and Carter the control of the Melies Company during that period. All of these transactions in regard to the sale of the stock to Lewis, and the formation of the voting trust, were unknown to the Edison Company until the meeting of December 18th, 1908, above referred to, and their disclosure at that meeting was the occasion of the declaration by Mr. Dyer, represent-



1 ing the Edison Company, that this violation of the agreement of September 18th, by Lodge and the Melies Company, terminated *ipso facto* the license agreement of that date. Though executed and sealed with other licenses to the former Edison licensees, the delivery thereof was refused by the Patents Company, on the ground that the complainant was not a licensee in good standing with the Edison Company, and that the Patents Company was under no obligation, contractual or otherwise, to the complainant, to issue its license to it under the circumstances above recited.

2 Thereafter, on May 21st, 1909, the complainant, the George Melies Company, filed its bill of complaint in the court below, alleging that the conduct of the defendants in the premises was contrary to equity and good conscience, and prayed for equitable relief, as follows: That the defendant, Motion Picture Patents Company, be ordered and decreed to produce in court a license agreement by its Vice President, J. J. Lodge, and delivered by said Lodge to said Motion Picture Patents Company; that if said license agreement had not already been signed and sealed on behalf of  
3 be ordered and decreed to sign and seal the same, and be further ordered and decreed to deliver the said license agreement, so signed and sealed, to complainant;

That in default thereof, said license agreement be declared in full force and effect, and that complainant be declared to be subject to all the obligations and entitled to all the rights and privileges of said license agreement, according to the terms and tenor thereof;

4 That defendant, Motion Picture Patents Company, its officers, agents, &c., be enjoined and restrained from directly or indirectly prohibiting or preventing its other licensees and license exchanges from purchasing motion pictures or other products or materials from the complainant, and from directly or indirectly depriving complainant of a market for its motion pictures, materials and products;

That complainant may have such other or further relief in the premises against the defendant, Motion Picture Patents Company, or the defendant Edison Manufacturing Company, or both, as may seem just and equitable.

By their intervening petition, filed October 23rd, 1909, George Melies and Gaston Melies were admitted as in-

terveners, and in their petition made answer to the allegations of the bill of complaint, and to said intervening petition the complainant afterwards made answer. After replication and issue and the taking of testimony, the case came on for hearing in the court below, and after argument by counsel for the respective parties and consideration by the Court, the bill of complaint and plea of intervention were dismissed.

After careful consideration of the pleadings in the case and the evidence as disclosed by the voluminous record, we have no difficulty in sustaining the action of the learned judge, who, as Chancellor, refused the equitable relief sought for by the complainant.

Referring to the supplementary agreement contained in the letter of September 18th, from Dyer to Lodge, which we have heretofore quoted at length, it appears that the license agreement between the Edison Company and the Melies Company was absolutely to terminate, if, at any time during its life the control of said company passed from Carter and Lodge, or if George Melies for any reason ceased to be a President or Director of the Company. The evidence clearly establishes the fact that, without the knowledge or consent of the Edison Company, control of the Melies corporation passed from Lodge and Carter, first to one Max Lewis, and afterwards to a voting trust. This is not a suit for forfeiture or rescission of a contract, for condition broken, but an attempt to invoke the equitable powers of a Chancellor to compel the recognition and performance of a contract by defendants, who assert that it has been terminated and is non-existent. Unquestionably, such a defense was available to these defendants without first resorting to judicial procedure for the forfeiture or rescission of the license contract.

Not only so, but the equitable relief sought by the complainant was properly refused by the Chancellor, on the ground of the false and fraudulent representations made by Lodge on behalf of the complainant to the Edison Company, immediately before the execution of the collateral agreement of September 18th, above referred to, and upon the faith of which we may presume that said agreement was executed by the said Edison Company. These representations were not merely promises as to future conduct, pos-

- 1    sibly made in good faith and afterwards broken, but as the evidence shows, were promises which must have been made with the intention of not keeping them, or with full knowledge that they would not or could not be kept. It will be recollected that at the very time Lodge promised, on September 18th, that no stock would thereafter be issued or sold to exchanges or those directly or indirectly interested therein, he was negotiating with Max Lewis for the sale and delivery to him of 350 shares of said stock, which sale was thereafter consummated. This evidence convicts Lodge of making promises on behalf of the complainant, with the  
 2    then present intention of violating them, so that conduct induced by these promises was induced by a false representation as to an existing fact; *i. e.*, his intention in regard to the issue and sale of stock.

Whatever might have been the effect of this conduct in a suit for rescission of the license contract, there can be no doubt that it might properly influence the judicial discretion of the Chancellor in denying the equitable relief of specific performance, on the ground that the complainant had not come into court with clean hands. Nor does  
 3    it matter that the defendant has not pleaded this as a specific defense, if the facts stated by the defendant in his answer and appearing in the evidence justify such a finding.

- It is also to be noted that the defendant, against whom a decree for a specific performance is prayed, is the Patents Company, which was under no contractual relation with the complainant, having had a merely verbal understanding with the other defendant, the Edison Manufacturing Company, that it, the Patents Company, would issue licenses to such of the licensees of the Edison Manufacturing  
 4    Company as were in good standing and were not in default in any of the terms and conditions of the license agreement theretofore made with the Edison Company, or whose licenses were in full force and effect. We do not think that this was such a contract as was made for the benefit of the complainant, and therefore entitling it to the decree prayed for. The Patents Company had no contract with the licensees of the Edison Company, but had merely consented to issue its license to such of them as the Edison Company should point out as in good standing



and not in default in their agreements with that company. We think the court below was clearly right in the exercise of its judicial discretion, when it refused the relief sought by the complainant.

The decree below is therefore affirmed.

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ACTON R. BOONE, a witness subpoenaed on behalf of the petitioner, being first duly sworn by the Examiner, testified as follows:

Direct examination by Mr. GROSVENOR:

Q. Mr. Boone, please state where you reside. A. Birmingham, Alabama.

Q. Were you doing business in Birmingham, Alabama, in the early part of 1910? A. Yes.

Q. Were you engaged in any branch of the Motion Picture business in the early part of 1910? A. Yes, sir.

Q. Were you engaged in the film rental business? A. Yes, sir.

Q. What were the names of the concern or concerns with which you were connected, and in which you had an interest? A. The Theatre Film Supply Company and the Birmingham Film Supply Company.

Q. Were they licensed film exchanges, that is, did they have so-called license exchange agreements with the Patents Company at that time? A. Yes, sir.

Q. Were both of these concerns located in Birmingham? A. Yes.

Q. You were distributing films to exhibitors located in the States outside of the State of Alabama, or was your custom confined to the State of Alabama? A. No; over all of the southeastern States.

Q. Please name the States to which you were distributing your films? A. Virginia, North and South Carolina, Georgia, Florida, Alabama, Mississippi and Tennessee. Those are positive. There may have been a little Louisiana or Texas business, or something like that.

Q. Had either of those companies been members of the Film Service Association? A. The Theatre Film Supply

1 Company was. The other company was at the time of the Film Service owned, if I am not mistaken, by Mr. George Kleine of Chicago, and was not known by that name. It was known as the Kleine Optical Company.

Q. Please state whether in the early Summer or late Spring of 1910, a new company entered the film rental exchange business in your territory, and if so, give the name of the company? A. In the Spring of 1910?

Q. Yes. Or in the Summer of that year? A. No. The office of the Mitchell Company of Little Rock was moved to Memphis, which came closer to us, but when it was, I don't know.

Q. What became of the Mitchell Company of Memphis, Tennessee? A. It sold to the General Film Company.

Q. About what time was that, approximately? A. I judge that that was about the middle weeks of August. During the first of August. From the first to the 20th, perhaps.

Q. What effect, if any, did the entrance of the General Film Company into the business of the film rental exchanges have upon the business of your company? A. The competition immediately became very severe. Mitchell, who was the former owner of the business, was made manager by the General Film Company, and he at once engaged one of our managers who was conversant with our customers, what they paid on the films that they received, and he was instructed by Mitchell to go into our territory—

Mr. KINGSLEY: I object to any testimony the witness may give respecting instructions that Mitchell may have given to this manager as incompetent.

4 By Mr. GROSVENOR:

Q. Tell us what this manager whom Mitchell hired, did do? A. He went over our territory and cut prices in many cases as much as fifty per cent. of what we were receiving from those customers, with the result that we lost those customers to the General Film Company, and our rentals from the territory covered by him, were at once reduced very materially. Eventually the rentals, the re-

duction in those rentals by cutting the price, brought us down to about the actual cost of operating of the exchange and buying of films; in other words, we were close to a losing basis.

Q. Did you come thereafter to New York, having in mind the subject of selling out your business? A. Yes, I came for the second time. I came to New York with that in view.

Q. Whom did you see when you arrived? A. I immediately met our general manager who had been sent to Chicago to collect all information possible as to what the General Film Company would give us for our exchange. He had seen Mr. Kleine and Mr. Selig, and he made a report to me of what they had told him. That the opportunity was now ripe for us to sell this exchange, and he being indisposed that afternoon, I went myself to see Mr. Berst, and one or the other of the Kalem Company. What are the names of the two?

Q. Marion and Long. A. Mr. Long is the gentleman I saw. I was endeavoring to find out about what they were going to give us, for the reason—

Q. (interrupting): By "they," whom do you mean? A. The General Film Company. For the reason that I was told by Mr. Kennedy on a previous visit that they did not care to buy any exchanges in the South at that time, and he wanted to know if I had made up my mind or if we, the company, had made up our mind as to what we wanted for the film exchange.

Q. When you say "he" wanted to know, whom do you refer to? A. Mr. Kennedy.

Q. On the previous interview? A. Yes.

Q. Well, we will come to that later. Now, please go on with what happened. A. They were unable to tell me exactly—they did not remember just exactly, but they told me that they had seen the list—this is Mr. Berst and the gentleman of the Kalem Company—they had seen the list, but they did not recall just what we were listed for. However, they were kind enough to make an engagement for me to meet Mr. Kennedy at the office at No. 10 Fifth Avenue, the old Edison Building. I went just a little beforehand in order to talk to Mr. Waters, whom I knew, and then came Mr. Kennedy and Mr. Selig and Mr. Kleine. Mr.



- 1 Kennedy left the room to go into his private office in the rear of the building, and Mr. Waters gave me to understand that twenty thousand—

Mr. CALDWELL: I object to the witness stating what Mr. Waters gave him to understand.

By Mr. GROSVENOR:

- Q. State what Mr. Waters said, to the best of your recollection. Tell us the substance of it if you cannot remember the exact words? A. Well, I know that he told  
2 me that he thought about twenty thousand dollars. Finally, Mr. Kennedy came in and invited me into the rear office, where I told him, with a slight preamble perhaps, that our company was incorporated for twenty thousand dollars and that they—that I had full instructions from the officers of the company to dispose of it, that I thought that we should get not less than twenty thousand dollars. He told me that that was out of reason, he could not do that, but he did tell me that he would give eighteen thousand five hundred dollars, and pay us cash for the merchandise; that is, the moving picture machines and such  
3 supplies, as you no doubt understand,—he would pay cash for them at inventory price. Of course I had nothing further to do than to accept that. However, in explanation, he told me what the interest would amount to, so that it would about satisfy our people as far as the twenty thousand dollars went. I had said once before in taking this matter up with him, that we would like to have stock in the company; if we had to sell to the company, we would like to have stock in the company, and I was given to understand that that would be agreeable if the deal was made. So when the deal was made I asked about how much stock,  
4 and he said that they would give us six thousand dollars of stock, but it was preferred stock. I was looking for the common stock in the company. I don't believe that our discussion of the matter lasted over fifteen minutes, and after shaking hands perhaps with him and Mr. Waters, I went back to the hotel and returned to Birmingham.

Q. Did you close the transaction? A. Verbally, yes.

Q. And then as a result of this interview, you sold out your business? A. Yes.

Q. To the General Film Company? A. Yes.

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Q. What was this earlier conference that you had with Mr. Kennedy, to which you have referred? A. That was shortly—when we saw the progress of the General Film Company, buying exchanges, I mentioned that we did not want to get into any ruinous competition that would lose us any number of dollars, and if they were going to buy, we would sell before that came.

Q. This is what you said to Mr. Kennedy? A. To Mr. Kennedy. And in a joking sort of a way, he said, "Oh, I don't think we want to buy any more exchanges today. We have bought a few." And that they were not yet ready to buy any exchanges in the South. They had not yet bought anything that came in competition with us except the Philadelphia office. We were then handling business in Norfolk, Virginia, and we felt no great amount of competition from the General Film Company in cutting the prices in Norfolk or in Virginia. Though there was in the trade among the theatres great apprehension how much they could delay in going with the General Film Company. They seemed to think the earlier the better. But the cutting of prices I do not think hurt us from the Philadelphia office at first. But we were eager to sell before this competition had reached us when Mitchell sold to the General Film Company.

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Q. Have you stated about all that took place at this earlier interview with Mr. Kennedy? A. He told me at that time that they had never spent over fifteen minutes in buying an exchange, and the price had to be made right when they did buy, and if more time—if they could not sit down at a table and close the deal in fifteen minutes, that they got up in fifteen minutes and they would not reopen the subject any more.

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Q. Then it was after this first conversation you had with Mr. Kennedy that the General Film Company bought out the Mitchell Exchange that started this competition which you have described, from Memphis? A. Yes. It was between those two interviews.

Q. Between these two conferences? A. Yes.

1 Cross examination by Mr. KINGSLEY:

Q. How far is Memphis from Birmingham? A. Approximately 250 miles. It is a night's run.

Q. And that is the competition to which you referred that the sale of the Mitchell Exchange brought about? A. Yes.

Q. Did Mitchell sell to the General Film Company? A. So I understood. The business was taken after that in their name.

Q. How much time elapsed between your first visit to New York to see Mr. Kennedy, and your second visit? A. Well,  
2 I can only tell you in an approximate way, but I should say it was within two months perhaps or six weeks.

Q. And how long had this rental exchange in Memphis been competing with you at the time you came to New York on the second trip? A. Immediately that we understood that it was purchased by the General Film Company, I started for New York.

Q. So that the competition had not been going on very long? A. Not very long. No.

Q. A week or two, would you say? A. I should say about a week.

3 Q. How much did you ask Mr. Kennedy for your exchange? A. I asked twenty thousand dollars.

Q. He gave you eighteen thousand five hundred? A. Yes.

Q. And the cash for your inventory? A. Yes.

Q. And how much stock in addition? A. Eighteen thousand five hundred dollars was the total. You understand how those things were made. In the usual way.

Q. Mr. Boone, price-cutting wars were not unknown in the film business, were they, in 1909? By that I mean, there had been occasions where rental exchanges had cut prices before that? A. Oh, yes.

4 Q. There had been some serious competition between exchanges, had there not, with respect to rates to exhibitors prior to 1909? A. As you understand, there was no set price, and there was sometimes this slashing of prices.

Q. On the first trip, there was no price discussed, was there, with Mr. Kennedy? A. No.

Q. He did not ask you the price and you did not set it? A. No.

Q. He simply said, "At this moment we are not pre-



pared to buy any exchanges in your territory?" A. He said that, yes. 1

Q. Were you interested in any theatres in 1909 or 1910?

A. Really I don't know just the date of the opening of the first theatre. It was August 18th of either 1909 or 1910, but I should say it must have been or it was in 1909.

Q. How many theatres were you interested in at the time you went out of the exchange business? A. I was interested in one in Chattanooga and one in Tampa.

Q. Did you serve those from your exchange? A. Yes.

Q. Was there anything in your contract of sale which prevented you from continuing in the film rental business? 2

A. Really I don't recall that there was, except the payments.

Q. Except the payments? A. Yes; the deferred payments were so small.

Q. You mean that you did not have capital enough? A. We did not have the capital.

Q. Now, you say that you were furnishing motion pictures to exhibitors through quite a number of States in the South? A. Yes.

Q. Uniformly, or almost uniformly, you rented these motion pictures to the exhibitors, did you not, for brief periods, and they returned them to your company after using them? 3

A. Yes. The usual method of handling the business at the time.

Q. That was the method that you employed in your exchange? A. Yes.

Q. And whether the exhibitor was in your State or in some other State, nevertheless you leased him the film and he paid the rent at some time and returned the films after he had used them? A. Yes.

Redirect examination by Mr. GROSVENOR: 4

Q. Was this competition of the General Film Company of a different character from the competition which had theretofore prevailed between the various film rental exchanges doing business in the South? A. Well, yes, for the principal reason, I should say, that the new films were always, and they still are, the most valuable to the theatre. They pay the largest price. And those were the films they shipped in to such points as Atlanta, which, under ordinary circumstances, Mitchell had endeavored to get into, or en-

- 1      deavored to compete, and to this point he was shipping those films there at a loss, and I think—I am quite sure—that he was buying extra copies of the Biograph films, in view of further forcing this competition at more than one point.

Mr. KINGSLEY: I move to strike out the last statement of the witness as being his own conclusion and not within his knowledge.

By Mr. GROSVENOR:

- 2      Q. Are you sure or are you not sure about that? A. I am sure.

Q. Is there anything else you want to add on this subject? A. Well, during my trip—

Mr. CALDWELL: I object to any voluntary statements.

Mr. GROSVENOR: I am endeavoring to get the witness to describe in his own way the character of this competition. So go ahead, Mr. Witness, and do the best you can, in spite of these objections.

- 3      Mr. KINGSLEY: I object to that as incompetent, immaterial and irrelevant and not proper redirect examination.

The Witness: During my trip to New York, I was constantly in telegraphic communication with the office, advising me about how much business we lost daily to Mitchell, and I knew that we were getting very close to a losing basis, and unless we sold to the General Film Company we would be ruined by the competition set up by Mitchell.

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By Mr. GROSVENOR:

Q. What was the name of this man that Mitchell, when he became manager of the General Film Company at Memphis, took from you? A. A. C. Bromberg.

Cross examination by Mr. CALDWELL:

Q. Then whatever advantage the General Film Company had over you, was in furnishing a better product, newer

films, isn't that right? A. No. The films were released on the same day. We had the same films. We could have diverted them from one point to another. 1

Redirect examination by Mr. GROSVENOR:

Q. You mean the General Film Company got better service from the licensed manufacturers than you did? A. I would not say that, but surely, if they did, it was a discrimination that we did not suspect. The films were supposed to be the same.

Recross examination by Mr. CALDWELL: 2

Q. You said the General Film Company furnished newer pictures than yours? A. Newer than were customarily going into that point.

Q. Then their advantage was due to their furnishing a superior product, was it not? A. No; I would not say so. I won't say that they sent films on the day of release to Atlanta, but I will say that for the same film of a given age, that they cut the price in half.

Q. Was there any such thing as uniformity in prices at that time? A. There was a limit of downward trend, and there was a limit of upward trend on account of the customer. 3

Q. Prices were not stable at all? A. The prices varied, yes; in various towns, however.

Q. They varied very much even for the same kind of service, did they not? A. No more than they do today.

Redirect examination by Mr. GROSVENOR:

Q. Has the complete payment been made by the General Film Company for this property which they acquired from you about three years ago? A. No. 4

Q. Was all the stock given to you? A. No stock has been delivered. We have requested the stock a number of times and it has never been delivered to us.

Q. How much of the money which was to be paid has been paid you? A. I really could not tell you offhand, but in stock and money they owe the two companies \$17,500 with interest, except the dividend interest.

Q. What was the amount which they were to pay you



1    according to the agreement of three years ago? A. For the Theatre Film Supply Company they were to pay \$18,500 in cash, deferred payments and stock, seven per cent. preferred stock.

Q. And how much is owing for that company today, did you say? A. There is \$6,000 of seven per cent. preferred stock, and I should say about \$4,000 in deferred payments.

Q. And for your other rental exchange, how much were you to get? A. We received for that, \$14,000—

2    Q. You received, or were to receive? A. We were to receive \$14,000 of stock and deferred payments, of which the deferred payments were ten thousand and the stock was four thousand.

Q. And how much of that has been given you? A. None of the stock, and I presume that there is about \$3,500, approximately so, of the deferred payments yet to be made.

Recross examination by Mr. KINGSLEY:

Q. Then you really sold two exchanges on the occasion of your second visit to New York? A. No; I sold one. The President of the other one was authorized to act for that.

3    I was not the President of but one.

Q. Did you represent both? A. No.

Q. Who sold the other? A. Mr. H. M. Newsome.

Q. Was he with you at the time of your second trip? A. No, that was sold afterwards.

Q. And that was sold for \$14,000, \$10,000 of which was in deferred payments, and \$4,000 in preferred stock? A. Yes.

Q. Were you a stockholder in the other one? A. Yes, I had acquired stock in that shortly after Newsome became possessor of it.

4    Q. Did Newsome own any stock in the Theatre Film Supply Company? A. No; he owned stock in the Southern Amusement Company, which eventually owned both.

Q. Now, at the time that you sold this Theatre Film Supply Company, you were authorized to represent the company, were you not? A. Yes.

Q. There is this other exchange regarding which you have testified. What was the name of that? A. The Birmingham Film & Supply Company.

Q. Did you own that? A. Not I.

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Q. What interest did you have in it? A. I held interest in the Southern Amusement Company, which was the company that owned it.

Q. But there was a joint interest between the Theatre Film Supply Company and the Birmingham Film & Supply Company, was there not? A. Yes.

Q. And there was no real competition between these two film rental exchanges in which you were interested? A. Well, there was a very limited competition. Our ownership, however, was very brief, up until the time of the sale to the General Film Company.

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Q. Your ownership was very brief in which company? A. The Birmingham.

Q. When did you buy into the Birmingham Film & Supply Company? A. It was in the Spring of the same year in which we sold to the General Film Company.

Q. 1910? A. 1910; yes.

Q. Are there any deferred payments due you now? A. Yes.

Q. Have not the deferred payments been made as they became due? A. Yes, in accordance with the contract.

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Q. And those which have not yet been made to you have not yet fallen due in accordance with the terms of the contract? A. Well, I don't know—I don't think—

Q. You know, don't you, as a matter of fact, that what has not been paid to you has not yet fallen due under the terms of the contract of sale? A. Yes.

Q. And when you say that some of these deferred payments are due, you mean, not that they are owing you—you mean they have not yet come due? A. No.

Q. With respect to that stock, you have been paid dividends on your stock according to the agreement, haven't you? A. Yes.

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Q. And what you mean here is that the stock has not been physically delivered into your possession? A. The certificates of stock, yes.

Q. The certificates of stock have not been personally delivered into your possession? A. Yes.

MR. KINGSLEY: Mr. Examiner, I desire to return you the pamphlet which has been referred to in

- 1 Mr. Swaab's evidence, and which is entitled "Edison Projecting Kinetoscopes, Lewis M. Swaab, Largest Dealer, 338 Spruce Street, Philadelphia." I desire you to retain this until it is called for.

The Examiner: Very well. We will now adjourn until 10:30 A. M. tomorrow.

Whereupon on this 10th day of July, 1913, the hearing is adjourned until 10:30 A. M., Friday, July 11th, 1913, at Room 47, Post Office Building, New York City.

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IN THE  
DISTRICT COURT OF THE UNITED STATES  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

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<p style="text-align: center;">UNITED STATES OF AMERICA, <span style="float: right;">Petitioner,</span></p> <p style="text-align: center;"><i>v.</i></p> <p style="text-align: center;">MOTION PICTURE PATENTS Co., and others, <span style="float: right;">Defendants.</span></p>	}	<p>No. 889.</p> <p>Sept. Sess., 1912.</p>
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New York City, July 11th, 1913.

The hearing was resumed pursuant to adjournment at 10:30 o'clock A. M. on this July 11th, 1913, at Room 47, Federal Building, New York City.

4

Present on behalf of the Petitioner, Hon. EDWIN P. GROSVENOR, Special Assistant to the Attorney General.

JOSEPH R. DARLING, Esq., Special Agent.

Present also, Messrs. CHARLES F. KINGSLEY, GEORGE R. WILLIS and FRED R. WILLIAMS, appearing for Motion Picture Patents Company, Biograph Company, Jeremiah J. Kennedy, Harry N. Marvin and Armat Moving Picture Company.



Mr. J. H. CALDWELL, appearing for William Pelzer, General Film Company, Thomas A. Edison, Inc., Kalem Company, Inc., Melies Manufacturing Company, Pathe Freres, Frank L. Dyer, Samuel Long, J. A. Berst and Gaston Melies.

Mr. HENRY MELVILLE, attorney for Geoge Kleine, Essanay Film Manufacturing Company, Selig Polyscope, George K. Spoor and W. N. Selig.

Mr. JAMES J. ALLEN, appearing for Vitagraph Company of America, and Albert E. Smith.

The Examiner: I will state to counsel that the record entitled Greater New York Film Rental Exchange *v.* Motion Picture Patents Co. *et al.*, from which "Defendants' Exhibit No. 39," has been incorporated into this record is returned to Mr. J. H. Caldwell.

Also, the book entitled "Vol. I, Motion Pictures Patents Company *v.* Independent Moving Pictures Company of America," containing Petitioner's Exhibit No. 172, and Vol. 2 of the same record, containing Petitioner's Exhibit No. 173, are returned to Mr. Grosvenor, said Petitioner's Exhibits Nos. 172 and 173, being incorporated into this record.

Mr. GROSVENOR: I offer in evidence (but not for copying into the record at this time) a statement made January 11th, 1912, by Durant Church, to William Pelzer, purporting to give a list of replevin suits instituted by Durant Church, this statement having been furnished to me in January, 1912, by the Patents Company, and which is marked at my request "Petitioner's Exhibit No. 218."

Also, I offer in evidence, a statement of replevin suits instituted by Motion Picture Patents Company, by Macdonald & Bostwick, and furnished to the Government in January, 1912, and referred to in Mr. Church's statement, which has been marked by the Examiner at my request Petitioner's Exhibit No. 219, but which need not be copied into the record.

I offer another statement which I shall ask that the Examiner mark for identification as an exhibit, which was produced by Mr. Pelzer while on the stand last February, I think, and which need not be copied into the record at this time, and which at my request has been marked by the Examiner "Petitioner's Exhibit No. 220, for identification."

1 Mr. KINGSLEY: I object to the introduction of these exhibits (Nos. 218, 219 and 220), on the ground that they are immaterial, irrelevant and incompetent, and on the further ground that it does not appear that Motion Picture Patents Company at any time instituted any replevin suits against anybody.

Petitioner's Exhibits Nos. 218, 219 and 220, by consent of counsel, are turned over to Mr. Grosvenor.

---

2 Thereupon, HERBERT MILES, a witness subpoenaed by the petitioner, of lawful age, being duly sworn by the Examiner, deposed:

Direct examination by Mr. GROSVENOR:

Q. Mr. Miles, in 1909 and 1910, were you engaged in the rental exchange business, that is, in the rental exchange business distributing films, motion picture films? A. Yes, sir.

3 Q. Please state what the name of that company was? A. Miles Bros., Incorporated.

Q. How many branches did that company have? A. At one time, eight.

Q. In 1909 how many branches were licensed by the Patents Company? A. Well, there was Miles Bros., Incorporated, of New York, and one of California—two distinct concerns, and the one of New York had three branch offices, Boston, New York and Baltimore.

Q. I show you a letter dated April 21, 1910, on the letterhead of the Motion Picture Patents Company. Please state whether that is a letter received by your company? A. Yes,

4 Q. About the time stated on the letter? A. Yes, sir, it has our stamp on it, "Received April 22."

Mr. GROSVENOR: I offer it in evidence.

The letter referred to was marked by the Examiner "Petitioner's Exhibit No. 221," and is as follows:

**Petitioner's Exhibit No. 221.**

1

**MOTION PICTURE PATENTS COMPANY**

80 Fifth Avenue

New York City.

April 21st, 1910.

Miles Brothers,  
New York City,

Gentlemen :—

2

We note that you report as a customer the Arlington Theatre, 361 Arlington Ave., Brooklyn, N. Y., giving as proprietor The Arlington Amusement Co.

We desire to call your attention to the fact that the license of this theatre was cancelled under the date of Sept. 13th, 1909.

Unless we are furnished with positive evidence that Mr. Cluse is not in any way interested in or connected with this theatre, we hereby notify you to discontinue service after April 24th.

3

Yours truly,  
**MOTION PICTURE PATENTS COMPANY.**

By J. B.

JB/SA.

X. 63.

Apr. 22, rec'd.

---

By Mr. GROSVENOR:

Q. I show you a printed letter with the printed signature of Motion Picture Patents Company on one of the same letterheads, dated March 10th, 1909, with the type-written address of your company, and I ask you whether that is another letter received by you, and whether it was received about the time stated? A. Yes, sir.

4

Mr. GROSVENOR: I offer that letter in evidence.

The paper referred to was marked by the Examiner "Petitioner's Exhibit No. 222," and is as follows:



1

**Petitioner's Exhibit No. 222.****MOTION PICTURE PATENTS COMPANY**

80 Fifth Avenue

New York.

March 10, 1909.

Exchange No. 63

Miles Bros, Inc.

2

259 Sixth Avenue,  
New York City

Gentlemen:

The Motion Picture Patents Company must RECEIVE by RETURN mail either direct from the exhibitor or through you all UNPAID six dollar (\$6.00) ROYALTIES (for the period March 8th to April 1st, 1909.)

Booklets.

3

A complete LIST of YOUR CUSTOMERS was sent you last week. The ENCLOSED is a RECORD of the LICENSE NUMBERS as ASSIGNED your customers and in all future correspondence we will use this number for REFERENCE PURPOSES. The ENCLOSED should be ATTACHED to the list sent you and KEPT ON FILE as a permanent record. Kindly keep us POSTED as to ADDITIONAL CUSTOMERS.

We have placed opposite those who have not paid an X. Kindly make DEMAND for PAYMENT and upon REFUSAL to pay, you must DISCONTINUE SERVICE.

4

ADVISE US at close of business each day of those CUSTOMERS on the list with whom you DISCONTINUE.

Yours very truly,  
MOTION PICTURE PATENTS COMPANY.

---

Q. For the purpose of refreshing your recollection, I show you a sheet, being entitled "Exchange Bulletin, No.

23, Motion Picture Patents Company, 80 Fifth Avenue," 1  
dated April 23, 1910. Please state whether the license of  
your exchange was cancelled on, or about, the time stated  
on that circular? A. Yes.

Q. What was the date? A. Well, I refreshed my mem-  
ory from another memorandum, and our Baltimore license  
was cancelled on April 19th, and Boston and New York  
were cancelled April 23rd, that is, to the best of my recol-  
lection, from a memorandum.

Mr. CALDWELL: Of what year? 2

The Witness: 1910.

Mr. GROSVENOR: I ask that this paper be copied  
into the record.

The paper referred to was marked by the Ex-  
aminer "Petitioner's Exhibit No. 223," and is as  
follows:

**Petitioner's Exhibit No. 223.**

Exchange Bulletin—No. 23. 3

**MOTION PICTURE PATENTS COMPANY**

80 Fifth Avenue

New York City

April 23, 1910.

The Licenses of the following Exchanges have been can-  
celled for violating the terms of their License Agreement  
relating to the use of licensed film in unlicensed projecting  
machines, and the maintaining of an unlicensed exchange:

Miles Bros., Inc. New York City. 4

Miles Bros., Inc. Boston, Mass.

Mr. Tom Moore, former manager of the Imperial Film  
Exchange of Washington, D. C., has been granted a License  
to lease licensed film. The new Exchange will be known as  
Moore's Film Exchange and will be located at 434 Ninth St.,  
N. W., Washington, D. C.

**MOTION PICTURE PATENTS COMPANY.**

1    By Mr. GROSVENOR:

Q. I show you another printed Exchange Bulletin, No. 22, dated April 19, 1910, and I ask you whether or not that is the memorandum, or circular, which you used in order to refresh your recollection as to the date of the cancellation? A. Yes, sir.

Mr. GROSVENOR: Please copy that into the record.

2    The paper referred to was marked by the Examiner "Petitioner's Exhibit No. 224," and is as follows:

**Petitioner's Exhibit No. 224.**

Exchange Bulletin—No. 22.

MOTION PICTURE PATENTS COMPANY

80 Fifth Avenue

New York City

April 19, 1910.

3    The attention of Exchanges is again directed to the importance of observing the conditions under which licensed film is supplied by the Manufacturers.

The Licenses of the following Exchanges have been cancelled for supplying licensed film to exhibitors whose royalties have not been forwarded to this Company, for exchanging film, and for failure to take proper precautions to prevent licensed film from passing into the hands of unlicensed persons:

Miles Bros., Inc.

at

4    Baltimore, Md.

Imperial Film Exchange

at

New York, Troy, N. Y.,

Washington, D. C.

MOTION PICTURE PATENTS COMPANY.



By Mr. GROSVENOR:

1

Q. I show you a letter on the letterhead of the Eastman Kodak Company, addressed to Miles Bros., New York City, dated May 22nd, 1908. Please state whether or not that was a letter received by you about the time indicated? A. Yes, sir; it has our official receiving stamp on it dated May 25th, 1908.

Mr. GROSVENOR: I offer that in evidence.

Mr. KINGSLEY: I object to that paper as incompetent, irrelevant, and immaterial, and not binding upon any of the defendants.

2

The paper referred to was marked by the Examiner "Petitioner's Exhibit No. 225," and is as follows:

**Petitioner's Exhibit No. 225.**

EASTMAN KODAK COMPANY,

Rochester, N. Y.

(Part of letterhead omitted.)

3

May 22, 1908.

Miles Bros.,  
New York City.

Gentlemen:—

We beg to notify you that we have entered into a licensed agreement with the Edison Manufacturing Company in accordance with which we shall be unable to supply you with moving picture film after June 20th, 1908, but until that date will accept your orders accompanied by cash for any reasonable amount.

4

Thanking you for past favors, we are

Yours truly,  
EASTMAN KODAK COMPANY,  
By M. H. McIntyre.

MH

Received May 25, 1908.

1    By Mr. GROSVENOR:

Q. I show you another letter, dated June 12, 1908, and ask you when that was received by your company? A. This was received, according to our official stamp, on June 15th, 1908.

Mr. GROSVENOR: I offer that in evidence.

Mr. KINGSLEY: It is objected to as incompetent, irrelevant, and immaterial, and as not binding upon any of the defendants.

2    The paper referred to was marked "Petitioner's Exhibit No. 226," and is as follows:

**Petitioner's Exhibit No. 226.**

EASTMAN KODAK COMPANY,

Rochester, N. Y.

(Part of letterhead omitted.)

June 12-1908.

Messrs. Miles Bros.,  
New York City.

3    Gentlemen:—

We wish to make a correction in our letter of May 22nd. Instead of saying that we would be unable to supply you with moving picture film after June 20th, we should have said after June 19th, as the new agreement goes into effect on the 20th. Therefore, any orders that you may wish us to ship you, should reach us in time for shipment on the 19th.

Yours truly,  
EASTMAN KODAK COMPANY.

4    By M. H.

AM  
Received June 15, 1908.

By Mr. GROSVENOR:

Q. I show you a copy of a letter, purporting to be addressed to Miles Bros., by the Motion Picture Patents

Company, of date December 21, 1909, and ask you whether that is a copy of an original letter received by your company about the time stated? A. Yes, sir. 1

Q. Do you know what has become of the original? A. It is on file in San Francisco; I saw it when I was out there in 1910.

Mr. GROSVENOR: I offer that in evidence.

The paper offered in evidence was marked by the Examiner "Petitioner's Exhibit No. 227," and is as follows: 2

**Petitioner's Exhibit No. 227.**

(Copy.)

MOTION PICTURE PATENTS COMPANY

80 Fifth Avenue

New York City.

December 21, 1909.

Miles Brothers, Inc.,  
790 Turk St.,  
San Francisco, Cal. 3

Gentlemen:

Replying to yours of the 13th.

The only exchanges that are permitted to supply film for use in Mexico are the exchanges located in Los Angeles, Cal., New Orleans, La., and in the State of Texas.

Yours very truly,  
MOTION PICTURE PATENTS CO. 4

By H. N. M.



- 1 Thereupon, J. C. GRAHAM, a witness subpoenaed by petitioner, of lawful age, being duly sworn by the Examiner, deposed as follows:

Direct examination by Mr. GROSVENOR:

Q. Mr. Graham, in 1909, and 1910, in what business were you engaged, and where were you located? A. In the film exchange business in Saint Louis.

Q. Was that one of the so-called licensed exchanges? A. Yes, sir.

- 2 Q. Had that company been in business several years? A. I can't state exactly the period of time, but previous to the formation of the Patents Company, even.

Q. Had it been a member of the Film Service Association? A. That was before my connection with the company; I think so, yes.

Q. Then up to the middle of, or the Summer of 1910, that company had been a licensee of the Motion Picture Patents Company? A. Yes.

- 3 Q. What other film exchanges were there doing business in Saint Louis that were licensed by the Patents Company in the year 1909, and up to the Summer of 1910? A. The O. T. Crawford Film Exchange Company.

Q. During the year 1909 and up to the middle of July, or July 19th, 1910, you may state whether or not your company had to the best of its ability lived up to the terms and conditions of the so-called license exchange agreement?

Mr. KINGSLEY: Objected to, as calling for a conclusion of the witness.

- 4 A. As far as we understood the rules and regulations they were strictly adhered to.

Q. I show you a telegram dated July 19, 1910, addressed to the Western Film Exchange, signed Motion Picture Patents Company. Was that a telegram received by your company? A. Yes, sir.

Q. On the date stated, cancelling your license? A. Yes, it was.

Mr. GROSVENOR: I offer that in evidence.

The paper referred to was marked by the Examiner "Petitioner's Exhibit No. 228," and is as follows:

**Petitioner's Exhibit No. 228.**

1

## NIGHT LETTER

## THE WESTERN UNION TELEGRAPH COMPANY

Sd—New York July 19 1910

Western Film Exchange  
Century Building,  
St. Louis, Mo.

We have cancelled your license for using licensed film  
in violation of terms of your license agreement with us.

2

## MOTION PICTURE PATENTS CO.

245 am 2

---

By Mr. GROSVENOR:

Q. This (Exhibit No. 228), is a night letter telegram,  
dated July 19th? A. Yes, sir.

Q. And it was then received by you on the 20th? A. Yes,  
sir, the forenoon of the 20th.

3

Q. Were you a stockholder in the Western Film Exchange? A. Yes.

Q. Did any of the stockholders of the Western Film Exchange have any interest in the O. T. Crawford Film Exchange also located at St. Louis? A. Yes, sir.

Q. Were you interested in the O. T. Crawford Film Exchange? A. I was.

Q. I show you a night letter telegram dated July 19th, 1910, addressed to the O. T. Crawford Film Exchange, and ask you whether that is the telegram of cancellation of the license of the O. T. Crawford Film Exchange received by that exchange on July 20th, 1910? A. Yes, this telegram was received practically identical with the other one, at the identical time.

4

Q. Were you familiar with the business of the Crawford Film Company? A. Yes, sir.

Q. Had that company to the best of its ability lived up to the terms and conditions of the so-called exchange license agreement?

1           Mr. KINGSLEY: Objected to as calling for a conclusion of the witness.

The Witness: Yes, sir.

Mr. GROSVENOR: I offer that telegram in evidence.

The paper referred to was marked by the Examiner "Petitioner's Exhibit No. 229," and is as follows:

**Petitioner's Exhibit No. 229.**

2                               NIGHT LETTER

THE WESTERN UNION TELEGRAPH COMPANY

SD New York July 19 1910

O. T. Crawford Film Exchange Co.  
1401 Locust St.,  
St. Louis, Mo

3           We have cancelled your license for using licensed film in violation of terms of your license agreement with us.

MOTION PICTURE PATENTS CO.

251a

---

By Mr. GROSVENOR:

4           Q. At this time, namely, July 20th, 1910, where was the Yale Film Exchange doing business? A. In Kansas City, Missouri.

Q. Had that company at the time named, namely, July 20th, 1910, any branch in Kansas City? A. No, sir.

Q. What happened to the Yale Film Exchange shortly after this date? A. The Yale Film Exchange of Kansas City, shortly after July 20th, established an agency in St. Louis.

Q. I show you a circular letter dated Kansas City, Missouri, on the letterhead of the Yale Film Exchange, and ask you to state what you may know about that circular? A. This circular was prepared in Kansas City and spread broad-



cast through the entire territory which was served by the St. Louis exchanges the day after our cancellation was received. 1

Mr. GROSVENOR: I offer that in evidence.

Mr. KINGSLEY: Objected to as incompetent, irrelevant and immaterial and as not binding upon any of the defendants in this action.

The paper referred to was marked by the Examiner "Petitioner's Exhibit No. 230," and is as follows:

**Petitioner's Exhibit No. 230.** 2

**YALE FILM EXCHANGE COMPANY, INC.**

Manufactures, Jobbers and Dealers.

Moving Picture Machines, Films and Song Slides of all  
Makes for Rent and Sale.

(Part of Letterhead omitted.)

Kansas City, Mo., July 20, 1910

To Managers of Up-To-Date-Moving Picture Shows:— 3

We take pleasure in advising you that we have been granted a license by the Motion Picture Patents Company to operate a film exchange in St. Louis, Missouri, and on July 25th, we will install at that point the most up-to-date film exchange in the West. From the very start, we will be among the heaviest purchasers of film in the United States and on account of the fact that we will have no old film on hand, we will be in a position to furnish the exhibitors in that territory the best service that can be obtained. We have established a reputation in the Kansas City territory for fair dealing and the best film service in the country. Inasmuch as the licenses of other exchanges operating under the Motion Picture Patents Company in St. Louis have been cancelled, we will be the only licensed exchange in that territory. 4

We cannot at this time advise you the street address of our new exchange, but will give you this information in a few days. If you are in the market for first class service, please write us immediately at St. Louis, Missouri, and we will be glad to correspond with you concerning such service.

1 We will also be jobbers for the standard makes of moving picture machines and carry on hand a stock of Edison, Powers, Motiograph and Pathe machines, also a large stock of machine repairs for all these machines. We will have a complete stock of all kinds of supplies for moving picture theatres and will maintain our reputation as complete moving picture show outfitters, furnishing everything except the building. We enclose herewith catalog quoting prices on all the different supplies.

2 In going into the St. Louis territory, we realize to the fullest extent that we will have to deal with the best class of exhibitors in the United States. We know we will have to furnish a service that will be the very best on the market in order to secure your business. We wish to assure you that we are equipped for meeting all conditions and have no fear in making this statement to you because we know that we have the goods to back it up.

3 As we stated at the beginning of this letter, if you are in the market for the most up-to-date film service in the United States at the most reasonable price, combined with fair business dealings, you will make no mistake by corresponding with the Yale Company. We only ask a trial knowing that we can satisfy you in every particular.

Assuring you that we have the best interests of the exhibitors at heart, knowing full well that our success depends on the good will of our customers, and trusting that you will give us the benefit of your business, we beg to remain,

Yours truly,  
YALE FILM EXCHANGE COMPANY.

WE SELL MOVING PICTURE MACHINES TO DEALERS.

Address All Communications to the Company.

---

By Mr. GROSVENOR:

Q. I show you another circular headed "Yale Film Exchange Company," dated August 1, 1910, and ask who sent that circular out, and where it was sent out?

Mr. KINGSLEY: Objected to as calling for a conclusion of the witness. 1

The Witness: This circular was issued by the Yale Film Exchange Company, who had, previous to August 1st, established their branch office in St. Louis. The contents of the circular will show that the trade was given to distinctly understand—

Mr. KINGSLEY: I object to what the witness may state regarding the contents of the circular on the ground that the circular speaks for itself. 2

By Mr. GROSVENOR:

Q. Start again and don't mind the interruptions. A. The Yale Film Exchange Company had established their branch in St. Louis previous to August 1st.

Q. That is between July 20th and August 1st? A. Yes, sir.

Q. Between those dates? A. Yes, sir, and the trade was distinctly given to understand that the licenses of the Western Film Exchange and of the O. T. Crawford Film Exchange had been cancelled and that they were no longer in a position to do business with this Association film. 3

Q. Please state whether or not the Western Film Exchange or the Crawford Film Exchange, whose licenses were cancelled on July 20th, 1910, had any earlier announcement than that contained in those telegrams to the effect that their licenses would be cancelled? A. Absolutely, no.

Mr. GROSVENOR: I offer this paper in evidence.

Mr. KINGSLEY: Objected to as incompetent, irrelevant and immaterial and as not binding on any of the defendants. 4

The paper referred to was marked by the Examiner "Petitioner's Exhibit No. 231," and is as follows:



1

**Petitioner's Exhibit No. 231.**

YALE FILM EXCHANGE COMPANY,  
Offices, Rooms 506-14 inclusive, Navarre Bldg.,  
604 Chestnut St.,

St. Louis, Aug. 1st, 1910.

**BULLETIN #2**

To all Moving Picture Exhibitors in St. Louis, and surrounding territory:—

2

Gentlemen:—

We recently addressed a circular letter to you calling attention to our having secured a license from the Motion Picture Patents Company, giving us the privilege of renting licensed film in St. Louis and adjacent territory.

You were also advised direct by the Official Bulletin issued from the office of the Motion Picture Patents Company of our appointment as their sole licensee for the City of St. Louis and adjacent territory.

3

In our circular we called your attention to the cancellation by the Patents Company of the licenses formerly held by the O. T. Crawford Film Exchange and by the Western Film Exchange of this City.

You were also advised direct by the Motion Picture Patents Company through the medium of their Official Bulletin of the cancellation of the Crawford and Western Exchange licenses. The information received from us and from the Patents Company is official and is to be depended upon.

4

Rumors have reached us today that certain parties are circulating reports here in the City to the effect that the Crawford and Western Exchange expect to be reinstated or granted new licenses by the Patents Company. This is a joke!

While we have no doubt, the Exchanges in question would be glad to secure the reinstatement of their licenses, in fact, they would probably welcome a reinstatement; yet the fact remains, there is ABSOLUTELY no possibility of either of these Exchanges being reinstated by the Patents Company. They are out and out for good, and such reports as reach you to the contrary you can rest assured are absolutely without truth or foundation.

We opened our new Exchange on Monday, July 25th and our success has been instantaneous. Every exhibitor we have come in contact with up to this time has welcomed us most heartily. We have been greatly impressed with our enthusiastic reception. We are pleased to state that we have at this writing secured contracts for over fifty per cent. of the business in this territory. We want more, want eighty-five per cent. of the business and such exhibitors as have not arranged with us for service, we earnestly request their patronage.

We are buying fifty-two reels per week of new subjects at present and will increase our buying as the demands of the exhibitors may justify. We are giving the exhibitors a satisfactory service and expect to continue to do so.

We want your business, and we earnestly hope you will come in and arrange for service, at once. For references as to the quality of our service, and as to our straightforward business methods, we refer you to some of the following leading exhibitors in St. Louis:

Wm. Sievers, Manager Grand Central Theatre.

Frank Talbot, Manager Lyceum Theatre. (Mr. Talbot is associated in business with Mr. O. T. Crawford, why is he using our service? Ask him.)

Mr. Werner, President of Independence Amusement Co.

Mr. Pipe, of the Delmar Theatre.

Fisher & Sippy, of the North Grand Theatre.

Heib & Kiely, and others too numerous to mention.

Do not permit yourself to be misled by the many false reports being circulated by unscrupulous people and remember we are the only licensed Exchange in St. Louis, and as long as we can give a satisfactory service to exhibitors in this territory, we will be the only licensed Exchange permitted to do business here.

Yours very truly,

YALE FILM EXCHANGE CO.

A. D. Flintom,

Sec'y. and Treas.

1

## YALE FILM EXCHANGE COMPANY,

Offices, Rooms 506-14 inclusive, Navarre Bldg.,

604 Chestnut St.,

St. Louis, Aug. 1st, 1910.

## BULLETIN #3.

## SPECIAL ANNOUNCEMENT!

To All Exhibitors Of Moving Pictures in St. Louis, And Surrounding Territory:

2

Gentlemen:—

We wish to announce the appointment of Mr. H. L. Maisch, formerly of the O. T. Crawford Film Exchange, as an assistant Manager of the St. Louis office of the Yale Film Exchange. Mr. Maisch is well and favorably known, not only in St. Louis, but throughout this entire territory. He was in the employ of the Crawford Film Exchange for a

3 he had entire charge of the Booking and Routing of all films.

Mr. Maisch reported to us for duty this morning. He will have complete charge of our Booking Department and on account of the large number of new reels of each and every release purchased by us each week, he will be enabled to furnish Moving Picture show exhibitors in this territory with a much better service than they have been able to obtain heretofore.

We earnestly request all friends of Mr. Maisch to call at our office and arrange for the famous YALE service without

4

In the conduct of our office we are securing the best help obtainable, placing competent men at the head of each and every department, thus enabling us to render exhibitors perfect service.

Yours truly,

YALE FILM EXCHANGE COMPANY,

By A. D. Flintom,

Manager.

AEH.



By Mr. GROSVENOR:

1

Q. Please state what effect, if any, the cancellation of the licenses of these two exchanges and the simultaneous establishment of a branch of the Yale Film Exchange in St. Louis, licensed by the Patents Company under the so-called license, had upon the business of these two companies, the Western Film Exchange and the Crawford Film Exchange? A. The effect was to practically put us out of business as far as the handling of any further licensed films were concerned. Our customers began to leave us the next day after the cancellation, in accordance with the age of the film that we were required to serve them. The new exchange began receiving new reels of the various manufacturers of the Patents Company, and consequently were able to take on the top run business of the various theatres that our two exchanges had been serving, because we couldn't give them the film of the makes and ages required. This continued to a point where we had practically no customers left. The only customers we could serve were a few that could run through what film we had left.

2

Q. In the film rental business is it necessary to have a constant, steady and uninterrupted supply of film in order to retain your customers, the exhibitors? A. Absolutely.

3

Q. I show you a telegram dated July 20th, purporting to be addressed to Western Film Exchange, and purporting to be signed by Pathe Freres Company, and stating: "Please return immediately reels expressed you the coming Friday and Saturday." Please state whether that is the date you received the telegram, July 20th? A. Yes, sir; it was received by us.

Q. Was similar action taken in respect to stopping the supplying of films by the other manufacturers from whom you had previously been obtaining films? A. They each took action in their own way which resulted in our not receiving any more film.

4

Mr. GROSVENOR: I offer that in evidence.

The paper referred to was marked by the Examiner "Petitioner's Exhibit No. 232," and is as follows:

1

**Petitioner's Exhibit No. 232.**POSTAL TELEGRAPH—COMMERCIAL CABLES  
TELEGRAM

Delivery No. 376

(Part of telegram form omitted.)

Branch Office, CENTURY BUILDING,  
St. Louis, Mo.

2

ar287-ch. sm. 10—

Chicago, July 20-10  
Western Film Exchange,  
Century Bldg  
St. Louis, Mo.Please return immediately reels expressed you coming  
Friday and Saturday.

Pathe Freres.

1107a

3

Special Rush Service.

By Mr. GROSVENOR:

Q. Did you or not come to New York about this time, or early in August, in an effort to revoke the cancellation, or to have revoked the cancellation of your license? A. Yes, I can't state the exact date that I came, but my recollection is it was within ten days.

Q. Whom did you see? A. I saw Mr. Kennedy.

4 Q. Mr. J. J. Kennedy, President of the General Film Company at that time? A. Yes, sir.

Q. Please state what conversation you had with Mr. Kennedy, to the best of your recollection?

Mr. KINGSLEY: Objected to as incompetent, immaterial and irrelevant, and not binding on defendants.

A. I called upon Mr. Kennedy, at his downtown office,

and discussed the situation regarding the recent cancellations. It was my effort to show Mr. Kennedy that the two corporations were companies legally organized under the State laws of Missouri, and contained stockholders, the personnel of which was apparently not familiar to Mr. Kennedy, or his associates. He admitted that, after I gave him an outline of the business of the two companies.

Q. Was anything said about whether the cancellation had been rightful or wrongful?

Mr. KINGSLEY: Objected to as leading.

The Witness: In our conversation I called Mr. Kennedy's attention to the fact that the two companies had been operated, as far as we knew, strictly in accordance with the rules and regulations of the Patents Company. He asked me questions as to whether certain films had been transferred from one office to the other, and I stated that it had not, it absolutely had not. He stated that in his opinion it was a grievous mistake that these exchanges had been cancelled, and he admitted that innocent people had been affected through the lack of their knowledge of the conditions. He told me that two individuals of our respective companies had been in the mind of the Patents Company, and that they proposed to teach those two individuals a lesson, claiming that there had been too much talk, and various carrying of rumors, and individual actions, which I showed Mr. Kennedy had no effect whatever on the Missouri companies as corporations, and which he admitted. He stated to me that it was too bad that they could not undo things that had been done.

Q. Had you had, or either of these companies had, any hearings on this question of whether you had violated the terms of the license? A. Absolutely none.

Q. After this conversation with Mr. Kennedy which you have testified to, in which he said the cancellation had been wrongfully made? A. Absolutely none. No effort was made to listen to our case in any other way than I have stated.

Q. After this conversation which you had with Mr. Kennedy was the cancellation revoked and were these two companies allowed to obtain films from the various manufacturers? A. The cancellations were not revoked, but the



- 1 companies were absolutely ignored from that time up to the present.

Q. From what manufacturers were the Western Film Exchange and the O. T. Crawford Film Exchange, obtaining films in the month that they were cancelled or, in the early part of 1910? A. The O. T. Crawford Film Exchange was receiving more film than the Western, for the reason that their rentals were higher, and they were able to carry a more complete program. The average purchases of the Western at that time were from twelve to fifteen reels a week, and the purchases of the O. T. Crawford Exchange ranged from 2 eighteen to twenty-one reels a week, as I recall it now.

Q. Were these companies buying from all the licensed manufacturers? A. These various reels were equally distributed amongst the different companies.

Q. Please state where the customers of these exchanges were located? Were they all in St. Louis, or were they in other States? A. No, sir; not all in St. Louis. They were located in the territory tributary to St. Louis accessible on the basis of proper express shipments, which is the limit of any exchange.

- 3 Q. Please name some of the States in which your exhibitors were located? A. The main percentage of our business was in Missouri and in Illinois, some business was drawn from western Tennessee and Kentucky and northern Arkansas, and possibly a few customers on the lower line of the State of Ohio.

Cross examination by Mr. KINGSLEY:

Q. In your conversation with Mr. Kennedy, did he give you the names of the two individuals whom he said he was trying to get out? A. Yes, sir.

- 4 Q. What are the names of those two persons? A. Mr. H. E. Aitken and Mr. O. T. Crawford.

Q. What position did they have in the respective companies? A. At that time, previous to the cancellation, Mr. Aitken was president of the Western. But I cannot state positively about Mr. Crawford. We had reorganized the offices at the time, other individuals and myself had purchased interests in the Crawford Exchange, and I forget whether he was vice-president or what office, but he had some office.

Q. Wasn't he in all probability president of the Crawford Film Exchange at that time? A. Now, I cannot state definitely about that, because of the reorganization previous. 1

Q. Were you the manager of these two exchanges? A. I was officially the manager of one only.

Q. Did you occupy most of your time in the affairs of this one of which you were officially manager? A. Most of my time, yes. I represented seventy-five per cent. of the stock in the Crawford Exchange.

Q. That was the Western Film Exchange? A. The one that I was manager of, yes. I represented seventy-five per cent. of the stock of the Crawford Exchange, consequently was in direct touch with their business operations. 2

Q. There was, as a matter of fact, no real competition between the Western Film Exchange and the O. T. Crawford Film Exchange Company, was there? A. Certainly there was. Absolutely.

Q. That is, you were the manager of the one? A. Yes, sir.

Q. And you represented seventy-five per cent. of the stock of the other? A. I did, yes, sir.

Q. And yet you say there was a very vigorous competition existing between these two? A. What do you mean by competition? 3

Q. Competition. A. Do you mean price-cutting?

Q. Yes. A. I would say no. It was the effort of the two companies to handle as much business in the territory as possible. Against the independent movement.

Q. Then what you mean by competition between these two customers was that each of them was striving to get as much business as possible in the territory covered? A. Exactly so.

Q. But not by cutting prices as against each other? A. That is right. The employees and the active management of each office had nothing to do with each other. And the ownership of stock was just the same as if you would own stock in the Standard Oil Company of New York and California. 4

Q. On the same basis? A. Just the stock ownership. It had nothing to do with the employees.

Q. The operations of these two film exchanges extended over several States, did they not? A. Yes.

Q. And the motion pictures which were sent out from

1 these two film exchanges to exhibitors in different states were sent out on a rental basis, were they not? A. Rented to theatres, yes, sir. We operated a regular theatre film exchange business, the same as any other film exchange in the United States.

Q. You rented them to the theatres and the exchanges? A. Yes.

Q. And received the motion pictures back in due course of business? A. That is right.

Q. After they had exhibited them? A. Yes.

2 Q. And your business was the business of a rental exchange in each instance pure and simple, was it not? A. A rental exchange, yes, sir.

Q. Was Mr. Crawford interested in the ownership of any theatres? A. I could not answer that. I knew nothing about Mr. Crawford's personal business at the time.

Q. Was the Crawford Film Exchange interested in any theatres? A. No, sir.

Q. Were you interested in any theatres? A. Not in St. Louis.

3 Q. Where were you interested in theatres? A. Interested in a theatre in St. Joseph, Missouri, which was not tributary to us at all. Had nothing to do with us.

Q. Didn't you supply it with motion pictures? A. No.

Q. Is that the only theatre in which you personally were interested? A. Yes.

Q. Were any of your other stockholders interested in theatres, exhibition houses, motion picture places? A. I think Mr. Aitken was interested in a theatre in Milwaukee.

Q. Do you know the name of that theatre? A. No. But none in St. Louis.

Q. You kept on in the rental exchange business, did you not? A. Not those two companies. No, sir.

4 Q. Are you in the motion picture business now? A. I am.

Q. In what company are you interested? A. You mean my present capacity?

Q. Well, are you a manufacturer of films at present? A. Yes, I am interested in one of the manufacturing companies.

Q. In what company is that? A. I am interested in the Reliance Company.



Q. How long have you been interested in the Reliance Company? A. Since I came to New York. 1

Q. Well, I don't know exactly when you came to New York? A. Oh, pardon me; over two years.

Mr. GROSVENOR: I object to all this as immaterial and not having any relation to any question asked on direct examination, and going into new matter, and therefore questions which do not have to be answered on the ruling of Judge Ray.

Mr. KINGSLEY: Judge Ray has not ruled on this particular question. 2

By Mr. KINGSLEY:

Q. Is the Reliance Company a manufacturer of independent films, and by that I mean independent motion pictures? A. Yes, sir.

Q. Where is it located? A. 540 West 21st Street, New York City.

Q. How long has the Reliance Company been a manufacturer of independent motion pictures? A. I could not state that definitely. 3

Q. Over two years, however? A. Yes.

Q. And is actively competing in the market, is it not, at the present time? A. Do not misunderstand my former statement. I am simply a stockholder of the company. As far as I know, they are doing business today.

Q. Are they actively competing in the market? A. Selling film; yes, sir.

Mr. GROSVENOR: Here are two letters I offer in evidence.

The papers offered were marked by the Examiner "Petitioner's Exhibit No. 233," and "Petitioner's Exhibit No. 234," respectively, and are as follows: 4

1

**Petitioner's Exhibit No. 233.****MOTION PICTURE PATENTS COMPANY**

80 Fifth Avenue, New York

July 10th, 1912.

National Theatre,  
1735 East 55th Street,  
Cleveland, Ohio.

Gentlemen:

2

Licensed exchanges are not permitted by the terms of their License to supply motion pictures to persons who make use of unlicensed motion pictures. We are, therefore, notifying licensed exchanges not to supply service for use in your theatre after July 14th, 1912.

Yours truly,  
**MOTION PICTURE PATENTS CO**  
By J. B.

JB/ACL.

3

**Petitioner's Exhibit No. 234.****MOTION PICTURE PATENTS COMPANY**

80 Fifth Avenue, New York.

December 5th, 1912.

Novelty Theatre,  
410 East Douglas Avenue,  
Wichita, Kansas.

4

Gentlemen:—

Re: Cancellation of License:

You are hereby notified that your license has been cancelled for exhibiting unlicensed motion pictures.

Very truly yours,  
**MOTION PICTURE PATENTS COMPANY.**  
By J. B.

JB-DP

Mr. GROSVENOR: There are certain things which  
either the Patents Company or Mr. Pelzer has been  
asked to produce, as appears on the record already,  
but have not yet been produced.

Mr. KINGSLEY: Here is the list of theatres cancelled on account of exhibition of unlicensed motion pictures (producing list). Here is the refusal to grant licenses (producing list). Here is the suspension of service list (producing list).

Mr. GROSVENOR: Counsel for the defendant produces, at the request of counsel for the Government, the following statement, dated 3/21/13, entitled "Licenses cancelled on account of exhibition of unlicensed motion pictures," and I offer it in evidence.

The list offered is marked Petitioner's Exhibit No. 235, and at the request of counsel for the Government, is not spread upon the record, but the same, by consent of counsel, is left in his custody.

Mr. GROSVENOR: I offer in evidence statement dated 3/25/13, entitled "Refused to grant licenses," the same being a list of the theatres to which said Motion Picture Patents Company refused to grant licenses. I offer it in evidence.

The list offered is marked Petitioner's Exhibit No. 236, and at the request of counsel for the Government, is not spread upon the record, but the same, by consent of counsel, is left in his custody.

Mr. GROSVENOR: I offer in evidence statement dated 3/25/13, entitled "Suspension of service, no reason being stated in the notice," such list being a list of theatres whose names were sent to the exchanges with statement that they should not be supplied with service.

The list offered is marked Petitioner's Exhibit No. 237, and at the request of counsel for the Government, is not spread upon the record, but the same, by consent of counsel, is left in his custody.

Mr. GROSVENOR: The defendants also produce statement showing names of theatres whose licenses were cancelled on account of renting or subletting licensed motion pictures, dated March 25th, 1913, and I offer it in evidence.

The list offered is marked Petitioner's Exhibit No.



1        238, and at the request of counsel for the Government is not spread upon the record, but the same, by consent of counsel, is left in his custody.

Mr. GROSVENOR: The defendants also produce a list of theatres showing new licenses granted to theatres whose license had been previously cancelled.

The list offered is marked Petitioner's Exhibit No. 239, and at the request of counsel for the Government, is not spread upon the record, but the same, by consent of counsel, is left in his custody.

2        Mr. GROSVENOR: The Government rests its case.

After conference between counsel and by consent, the hearings were continued until Wednesday, October 1st, 1913, at 10 o'clock A. M., at New York, counsel to be advised of the location thereof by the Examiner.

3

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